From Impact to Action: Final report into anti-Black racism by the Toronto Police Service

Introduction

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For all members of society, these accounts can bring sadness, anger or shame. But for Black communities, the impact and pain caused by discriminatory policing run deeper. These are not stories – they are lived experiences.

The impacts of discriminatory policing are exponential in their effects. Racial profiling leads to a police stop. The police stop leads to a record. The record affects an employment opportunity. The stops compound, as the person slowly becomes someone who is "known to police." The threat of physical harm looms, while every stop increases the chance of a charge, then an arrest. Every charge is a potential conviction, every conviction is potential incarceration. Another life turned upside-down. Another family broken. Another community ravaged.

These are the systemic effects of anti-Black racism.

The Ontario Human Rights Commission (OHRC) launched its Inquiry into anti-Black racism by the Toronto Police Service (TPS) in response to these experiences that Black communities have repeatedly identified over many decades.

In Ontario's human rights system, the OHRC does not make legally binding determinations of Human Rights Code (*Code*) violations or liability – only the Human Rights Tribunal of Ontario (HRTO) can do that. But s. 31 of the Code gives the OHRC the power to initiate inquiries such as this one, to help identify and promote the elimination of discriminatory practices in Ontario.

To fulfill its statutory mandate, the OHRC must identify circumstances that, in its view, amount to discrimination, and make recommendations to help organizations eliminate those practices.

Through this Inquiry, the OHRC has sought to determine how anti-Black racism in society – a fact recognized by the courts and the police – has expressed itself in the policing of Black lives in Toronto. The Inquiry undertook a detailed examination of the experiences of Black people interacting with police in Toronto, and has been unique in gathering hard data together with the lived experiences of Black communities.

Based on the OHRC's review of the facts, including the data, the lived experiences of Black communities, and case law, the OHRC finds that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism. Interviews with the TPS and Toronto

Police Services Board (TPSB) and a review of thousands of pages of documents revealed gaps in TPS and TPSB policies, procedures, training, and accountability mechanisms that have helped perpetuate discrimination and contributed to mistrust of police among Black people.

As our consultations made clear, Black communities do not simply need another report with recommendations. The OHRC's final report on its Inquiry into anti-Black racism by the TPS sets out a path to move *From Impact to Action* – a path of meaningful actions aimed at changing outcomes for Black communities.

March 18, 2024

Ontario Human Rights Commission written deputation to the Toronto Police Services Board on the implementation of recommendations from the OHRC's report From Impact to Action

Introduction

The Ontario Human Rights Commission (OHRC) released "From Impact to Action", its final report on anti-Black racism by the Toronto Police Service (TPS) in December 2023. The OHRC's report and recommendations underscore the importance of effectively addressing systemic racism and discrimination in law enforcement to build safer and more inclusive communities. This is the OHRC's written deputation to the Toronto Police Services Board (TPSB). It is a response to the TPS and TPSB's written update to the Board on the status of implementing over 100 recommendations provided in the OHRC's final report.

The Inquiry

In 2017, the OHRC launched an inquiry into anti-Black racism by the TPS in response to Black communities' negative experiences over many decades. The inquiry involved guidance from experts, meaningful engagement with Black communities, TPS and TPSB, the Toronto Police Association (TPA), volunteers who make up their advisory committees, including the TPSB's Anti-Racism Advisory Panel (ARAP), and the Mental Health and Addictions Advisory Committee (MHAAP). The inquiry also assessed the TPS and TPSB's culture, training, policies, programs, procedures, and accountability mechanisms relating to racial profiling and discrimination.

Key Findings

The OHRC's inquiry found that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism across the range of interactions with the Toronto Police Service. The TPS data gathered by the OHRC, including street checks, charges, arrests, and use of force, show that Black people are significantly overrepresented across the spectrum of policing interactions. The TPS's analysis of more recent data also shows that Black people are overrepresented in TPS "enforcement actions," use of force, and strip searches.

The inquiry found that the TPS policing practices and activities disproportionately affect Black people and contribute to racial profiling and discrimination against them. The TPS admitted this in a press conference and pledged to do better.

Notably, the inquiry found that there is a significant lack of trust between Black people and the police, which is attributed, in part, to the policies, procedures, training, and accountability mechanisms of TPS and TPSB. This contributes to the perpetuation of systemic racial discrimination, even with the implementation of TPS and TPSB reform initiatives.

Specific Replies to TPSB Response

In its response to the OHRC's inquiry, the TPSB states that almost half of the recommendations require clarification. While clarification can be productive, it cannot be used to dispute or ignore recommendations. It is essential to know that within the primacy of the *Code*, the findings of the OHRC inquiry and recommendations govern; they are not optional. It is crucial to address and implement all the recommendations, that is, those which apply to the TPS or both TPS and TPSB.

During the inquiry, a diverse range of Black communities recounted their unique lived experiences and perspectives on policing and public safety in Toronto. Black communities consistently called for enforceable recommendations to promote accountability. The OHRC commends the TPS and TPSB for introducing reform initiatives. However, despite the reforms implemented at the time of the final report, the OHRC found that the root problem persists.

This necessitates the insertion of an enforcement agreement. Such an agreement is a leading practice; it would build trust and meet a goal of the TPS and TPSB as stated in their Equity Strategy – "to rebuild, repair and strengthen relationships with [Black communities], especially those we have failed in the past". By entering an agreement, both parties solidify their commitment and demonstrate to the communities their commitment to accountability and building trust. Any enforcement mechanism would only be used as a last resort.

A Collaborative Human Rights-based Approach to Implementation and Enforcement of Recommendations

The recommendations in *From **Impact to Action*** reflect the OHRC's work noted above and reported in **[A Collective Impact](#)** and *A **[Disparate Impact](#)***. These recommendations set a path to meaningful actions to change outcomes for Black communities. The **[Ontario *Human Rights Code*](#)** empowers the OHRC to investigate practices that are systemically discriminatory and recommend solutions. The OHRC is accountable to the public and has a legal duty to ensure its recommended solutions are implemented and enforced. The *Code* holds primacy in Ontario. The OHRC is Ontario's human rights expert. The OHRC exercised its mandate, conducted an inquiry on the TPS and TPSB and based on its findings, recommended actions they must take to meet their obligation under the *Code*. To be compliant with the *Code*, the TPS and TPSB must implement the recommendations to address systemic racial discrimination, racial profiling, and anti-Black racism.

The OHRC is pleased that the TPS and TPSB have turned their minds to creating an Equity Strategy and have started the important work of determining where there is alignment with the OHRC's recommendations. Four of its priorities relate to specific issues identified in the OHRC's inquiry. The OHRC acknowledges that since the inquiry began, the TPS and TPSB have made these and other changes to policies and procedures. Some of that work is reflected in TPS's report to the Board. The report provides an overview of TPS's approach to categorizing and implementing the 67 recommendations they identify as relating to its service. However, apart from the recommendations directed to the SIU and Ontario, the recommendations are for the TPS and the TPSB.

They have identified 58 of the OHRC's recommendations, which align with their Equity Strategy. Human rights-based principles must be embedded in the Equity Strategy Framework and other reform initiatives. This is vital. Here is where the work should begin.

As this work continues, we encourage the TPS and TPSB to develop a detailed and transparent system to evaluate how their work responds to the OHRC's recommendations.

Conclusion

The OHRC is fully committed to working with TPS and TPSB to implement the recommendations on which they are aligned but believes that an enforceable agreement is a crucial step in the right direction.

We – the leaders of two essential institutions in our province – are charged with the duty to maintain peace, order, and good government. According to the late Hon. Jim Flaherty, no service is more honourable than public service. So, when the annals about Ontario's public servants are written, what do you want yours to say? …Let it be, *I dedicated community above self* because you took steps to tackle anti-Black racism in policing. To each member of the TPS and TPSB, I urge you to make that your legacy. Thank you.

Executive Summary

Introduction

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To fulfill its statutory mandate, the OHRC must identify circumstances that, in its view, amount to discrimination, and make recommendations to help organizations eliminate those practices.

Through this Inquiry, the OHRC has sought to determine how anti-Black racism in society – a fact recognized by the courts and the police – has expressed itself in the policing of Black lives in Toronto. The Inquiry undertook a detailed examination of the experiences of Black people interacting with police in Toronto, and has been unique in gathering hard data together with the lived experiences of Black communities.

Based on the OHRC's review of the facts, including the data, the lived experiences of Black communities, and case law, the OHRC finds that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism. Interviews with the TPS and Toronto Police Services Board (TPSB) and a review of thousands of pages of documents revealed gaps in TPS and TPSB policies, procedures, training, and accountability mechanisms that have helped perpetuate discrimination and contributed to mistrust of police among Black people.

As our consultations made clear, Black communities do not simply need another report with recommendations. The OHRC's final report on its Inquiry into anti-Black racism by the TPS sets out a path to move *From Impact to Action* – a path of meaningful actions aimed at changing outcomes for Black communities.

Systemic discrimination

What does systemic discrimination mean?

Systemic discrimination is about the systems that organizations have in place which, while they may appear to be neutral on their face, create impacts that perpetuate and exacerbate disadvantage experienced by a historically marginalized group. Systemic discrimination is sometimes hard to see – but the impacts are real.

Systemic discrimination occurs in the context of broader societal forces. An organization such as the TPS or TPSB is unlikely to be the only source of the disadvantage experienced by a group. However, the *Code* requires those organizations to take steps to ensure their conduct is not perpetuating the disadvantage.

In some instances, discriminatory police conduct experienced by Black persons may be individualized and direct – motivated by explicit racial animus or implicit, subconscious racial bias. In these cases, the TPS and TPSB have a legal obligation under the *Code* to establish systems – training, accountability, oversight – to address this conduct when it occurs and/or prevent it from occurring in the future.

In other cases, systemic discrimination can arise not from an individual act, but from the structure of the system itself – for example, by deploying greater policing resources to an area marked as "high crime" when those crime statistics were themselves a product of racial profiling and anti-Black racism.

Whether through overt actions of officers, or through systemic over-policing of a community, in these cases there may not be a "bad apple" at whom to point fingers. It is simply how the system works. But that does not make the impact any less harmful to the Black people who experience it. Nor does it remove the *Code* obligation of the TPS or TPSB to address it.

Individual and systemic racial discrimination are also linked. Discrimination arising from an individual's bias can have a broader, systemic impact, and may contribute to racial disproportionalities.

There does not need to be any explicit or implicit racial bias for systemic discrimination to exist. If providing policing services exacerbates the disadvantage faced by Black people in Toronto, then it is discriminatory. And once discriminatory impacts have been identified, as they have been here, the *Code* requires organizations to take immediate steps to address and remedy those failings.

Background to the Inquiry

The OHRC is the provincial statutory agency responsible for advancing human rights and preventing systemic discrimination in Ontario.

In 2017, the OHRC launched its Inquiry into anti-Black racism by the TPS. The Inquiry's terms of reference directed staff to examine TPS policing practices and activities between January 1, 2010 and June 30, 2017 to assess whether those practices disproportionately affect Black people, and whether the conduct is consistent with racial profiling and racial discrimination against Black people.

The Inquiry examined TPS and TPSB culture, training, policies, programs, procedures, and accountability mechanisms relating to racial profiling and racial discrimination. Finally, the Inquiry examined how the TPS and TPSB respond to findings by the HRTO, civil and criminal courts that police officers engaged in racial discrimination or racial profiling, or where such inferences reasonably flowed from the findings. This aspect of the Inquiry extended beyond 2017, and references in this report to TPS and TPSB initiatives and materials are current as of time of writing, i.e., July 2023.

The OHRC retained Dr. Scot Wortley, PhD (Professor and Graduate Coordinator, Centre for Criminology & Sociolegal Studies, University of Toronto) to provide expert assistance with the Inquiry. His role included analyzing data obtained by the OHRC from the TPS and Special Investigations Unit (SIU), as well as survey data.

On December 10, 2018, the OHRC released its first interim report, *A Collective Impact*, which included Dr. Wortley's findings from SIU data, case-law review, review of the SIU Director Reports, and the results of the OHRC's consultation with 130 members of Black communities across Toronto.

On August 10, 2020, the OHRC released *A Disparate Impact,* which included two reports from Dr. Wortley analyzing TPS data related to charges, arrests and releases, and police use of force.

From Impact to Action, the OHRC's final Inquiry report, reflects our work with Black communities and the TPS and TPSB. It sets out a path to meaningful actions aimed at changing outcomes for Black communities. It is also a culmination of the work reported in *A Collective Impact* and *A Disparate Impact.*

From the outset, *From Impact to Action* makes the finding that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism by the TPS. This finding is supported by the evidence gathered throughout the Inquiry, which clearly establishes that services provided by the TPS have a disproportionate negative impact[1] on Black communities. The evidence includes:

- voices from Black communities
- reports on anti-Black racism
- OHRC and TPS statistical analyses
- voices of TPS officers
- the courts
- acknowledgement by the TPS of anti-Black racism.

The report describes the results of consultations, including a policy roundtable of policing experts and community representatives, a TPS officer survey, and direct engagement with Black communities. The OHRC also conducted interviews with members of the TPS senior command, including the Chief of the TPS, the Chair of the TPSB, and the Executive Director of the TPSB.

The report also identifies gaps in TPS and TPSB policies and procedures in:

- stops and searches
- charges and arrests
- use of force
- anti-racism initiatives and training, and
- monitoring and accountability.

Finally, the report identifies recommendations to fill these gaps and address systemic anti-Black racism.

The OHRC is grateful for the time, patience, participation, strength, and courage of members of Black communities. Despite decades of frustration and trauma, Black communities remained engaged in this process. We heard personal stories, insightful critiques, and forward-thinking ideas that were shared with the expectation that this Inquiry will lead to meaningful change. We are immensely thankful for each of these engagements, which have greatly informed this report.

We also express gratitude to the rank-and-file officers, including Black officers, who spoke to us and are committed to ensuring this report will result in concrete change and not be "just another report."

The OHRC extends sincere thanks to the TPS, TPSB and Toronto Police Association (TPA) leadership, and the volunteers who make up their advisory committees, including the TPSB's Anti-Racism Advisory Panel (ARAP) and Mental Health and Addictions Advisory Committee (MHAAP), for their time and co-operation.

The OHRC acknowledges that policing is a complex and difficult endeavour. The situations and circumstances front-line officers face daily can result in tremendous pressure and strain.

This report is intended to shed light on critical flaws in our public safety and policing systems. However, it should not be perceived as condemnation of all officers. Indeed, in many circumstances, officers are asked to deal with matters for which they are not equipped or qualified – leading to various unfortunate results.

In a recent report on the review of the TPS, the City of Toronto's then-Auditor General, Beverly Romeo-Beehler, observed:[2]

[TPS] plays a key role in ensuring the safety and well-being of the people of Toronto through its delivery of policing services. As first responders, TPS officers are on the front lines and respond to a variety of situations. However, not all of the calls for service that TPS has historically responded to are police matters.

In responding to these calls for service, TPS has effectively become the default response in some situations when alternative non-police responses are not in place or not available when needed.

Anti-Black racism in policing in Toronto

The OHRC finds that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism in TPS policing services.

The OHRC has identified six cornerstones that support our finding that TPS policing services have a disproportionate negative impact[3] on Black communities.

Voices from Black communities

The OHRC met with approximately 190 individuals from Black communities. They told the OHRC about their negative lived experiences with TPS officers, across the spectrum of interactions including stops, searches, charges, arrests, and use of force.

After the release of *A Collective Impact* and *A Disparate Impact*, the OHRC continued to document experiences of Black people involving unnecessary stops, questioning, searches, charges, arrests, and excessive force.

Findings related to intersecting identities

Black communities with intersecting identities and experiences (e.g., people living with mental health disabilities and/or belonging to LGBTQ2S+ communities) have had unique and often difficult relationships with the TPS for decades.

The OHRC acknowledges that multiple and intersecting identities can compound the causes, frequency, and intensity of anti-Black racism for the people who experience it. This report touches on some of these intersections and highlights the unique nature of these experiences.

Reports on anti-Black racism

International and Canadian reports confirm systemic anti-Black racism in policing in Canada.[4]

There are also reports commissioned by the TPS and TPSB that confirm Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism in policing services provided by the TPS.[5]

These reports have confirmed the adverse experiences of Black people in their interactions with Toronto police over many years, and echo repeated calls for change.[6]

OHRC and TPS statistical analysis

Racial disparities in data gathered by the OHRC in TPS charges, arrests, and use of force were thoroughly analyzed by Dr. Wortley and his team in the Inquiry's interim reports, *A Collective Impact*[7] and *A Disparate Impact*.[8] This current report *From Impact to Action* includes:

- analysis of TPS street check data and qualitative research and survey data on stops and searches,[9] and
- analysis of additional benchmarking of TPS charge, arrest, and use-of-force data in an addendum to the expert report featured in *A Disparate Impact*.[10]

These reports affirm that Black people are significantly overrepresented across the spectrum of policing interactions in TPS data gathered by the OHRC, specifically including street checks, charges, arrests, and use of force. Black people are also significantly overrepresented in qualitative and survey data on police stops and searches in Toronto.

The TPS's analysis of more recent data also revealed that Black people are overrepresented in TPS "enforcement actions," use of force, and strip searches.[11]

While there may be other contributing factors to the OHRC's and TPS's findings, many racial disparities are particularly indicative of systemic racism, racial profiling, and anti-Black racism in TPS policing services, such as racial disparities that result from proactive police activity or highly discretionary charges.[12]

Indeed, "regardless of the confluence of factors, police services – and other actors in the justice system and government – have an obligation to proactively tackle systemic inequalities that impact" Black people.[13]

Voices of TPS officers

The OHRC reached out to officers through interviews and a public call at the Inquiry's launch, and a service-wide communication sent to all officers. We received feedback on topics including but not limited to: police culture, training, policies, procedures, accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities.

Several recurring issues emerged, centred on two broad themes, which support the OHRC's finding:

- a culture of racism and racial discrimination
- anti-Black racism and racial discrimination in providing services to the public and in employment.

A Black officer summarized TPS culture as: "… if you are pro diversity, equity and inclusion – it means you are anti-White … Our biggest problem is our culture. There's no sense of urgency for the culture to be different."

The courts

Case law analyzed by the OHRC confirms systemic racial discrimination, anti-Black racism, and individual racial discrimination of Black people in policing.

The Supreme Court of Canada, the Ontario Court of Appeal, and the Ontario Superior Court of Justice have all acknowledged the existence of anti-Black racism in our criminal justice system, including within the TPS. Multiple trial courts and human rights tribunals have also found instances of racial discrimination and/or profiling by the TPS.[14]

Acknowledgement by the TPS of anti-Black racism

Over the past five years, the TPS, TPSB, and City of Toronto have acknowledged that racism exists in policing. These acknowledgements confirm the OHRC's finding.

In June 2022, then-Interim Police Chief James Ramer acknowledged and apologized for systemic racism. Chief Ramer stated that the results of the TPS's analysis of 2020 data on use of force and strip searches confirmed what Black communities have been telling the TPS:[15]

That they are disproportionately over-policed. This data demonstrates the unfortunate realities of those experiences. As an organization, we have not done enough to ensure that every person in our city receives fair and unbiased policing. For this, as Chief of Police and on behalf of the Service, I am sorry and I apologize unreservedly.

…

With the release of the initial results of this report and ongoing work, I recognize that today will be a difficult day for many within the Service and within the communities we serve.

It is difficult for the Toronto Police Service because our own analysis of our data from 2020 discloses that there is systemic discrimination in our policing in these areas. That is that there is a disproportionate impact experienced by racialized people and, particularly those from Black communities when there is a use-of-force interaction with the Toronto Police Service.

Gaps in TPS and TPSB policies, procedures, training, and accountability mechanisms

There are significant issues with TPS and TPSB policies, procedures, training, and accountability mechanisms that helped perpetuate systemic racial discrimination, and contributed to mistrust of police among Black people. They include:

- TPSB policies and TPS procedures do not adequately guide officer discretion to stop and search people.

- The TPS and TPSB did not purge historical street check data, much of which is the product of racial profiling.

- TPSB policies and TPS procedures do not provide sufficient guidance to officers to determine whether to lay charges, arrest, or use alternatives.

- The TPSB and TPS did not develop a distinct policy or procedure on racial profiling.

- Anti-Black racism training is not sufficiently integrated into other TPS training programs using scenario-driven, experiential learning modules, and is not effectively evaluated.

- Race-based data is not being collected, analyzed, or reported on:
  - all stops, including investigative detentions, protective searches (formerly Level 1 searches), and frisk searches (formerly Level 2)
  - use of force that results in physical injury that does not require medical attention.

- The TPSB's policy on race-based data prohibits race-based data from being used in officer performance management. The TPS's early intervention system does not include race-based data.

- Findings in cases were not treated adequately by the TPS and TPSB from a disciplinary perspective, including:
  - cases where racial profiling or racial discrimination was found by the HRTO and courts
  - cases where an inference may be drawn that there was racial profiling or racial discrimination in criminal cases with *Canadian Charter of Rights and Freedoms* (*Charter*) violations that did not assess whether there was racial profiling or racial discrimination.

- Recommendations of the Auditor General and Ombudsman Toronto – including in a review of the implementation of 81 recommendations of the *Police Reform* Report – are not legally enforceable.

Recent steps taken by the TPS and TPSB to build trust with Black communities and address systemic racial discrimination

The OHRC recognizes that the TPSB and the TPS have taken important steps since the Inquiry was launched to build trust with Black communities and address systemic racial discrimination and its intersections in policing services. For example:

- Then-interim Chief Ramer apologized for systemic racism in 2022.[16]

- The TPSB passed its Policy on Race-Based Data Collection, Analysis and Public Reporting in 2019, which requires race-based data collection, analysis, and reporting on a wide variety of interactions.[17]

- The TPS analyzed 2020 race-based data on use of force and strip searches, and committed to the implementation of 38 resulting action items. The TPS's analysis went beyond the requirements of the regulation under the *Anti-Racism Act*.[18]

- The TPS's new use-of-force procedure and the TPSB's draft use-of-force policy, both of which were developed in 2022, require that, among other things:
  - de-escalation be continuously considered and used where possible, and
  - officers intervene where they witness inappropriate or excessive force used by another officer, and report it to their supervisor.[19]

- The TPSB adopted the 81 recommendations from its 2020 report on *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (*Police Reform* Report).[20]

- The TPSB's new collaborative and consultative approach to policy development, which was used to inform the development of the TPSB's body-worn and race-based data collection policies.

- The TPS and TPSB's consultation and cooperation with the OHRC.

These steps represent genuine progress by the TPS and TPSB toward positive change. It is important to note that such progress was made possible by sustained pressure from Black communities and a social movement demanding change. It also reflects pressure from the OHRC's two interim Inquiry reports*,* years of previous recommendations made by the OHRC, and above-mentioned collaboration with the OHRC.

Remedying systemic discrimination requires systemic change

Sometimes systemic change can be achieved through better anti-discrimination training or policies.

But in some cases, the structure as a whole must be questioned because it is flawed in a way that must be remedied to ensure the cycle of systemic discrimination is broken.

Reimagining the police is at the heart of community calls for "de-tasking and defunding." It asks: if current systems keep harming Black people, is it not fair to consider whether the structure of the system itself is broken?

As explained by experts, these concepts are about recognizing that many social problems are better addressed by non-policing methods, and ensuring police officers are encouraged and permitted to respond to and address issues for which they are adequately trained.

The OHRC has developed 107 recommendations to address systemic anti-Black racism. The OHRC is committed to holding the TPS and TPSB accountable for implementing them through independent monitoring and legal enforceability.[21]

The OHRC's recommendations include:

- destroying historical street check data

- providing guidance in policies and procedures on alternatives to charges and arrests
    - this includes and builds on an officer's discretion to use informal warnings, cautions, or diversion programs

- requiring supervisory approval and/or equity audits of charges

- expanding circumstances where officers should not use deadly force or shoot

- expanding the collection, analysis, and reporting of race-based data on stop, searches, charges, arrests, and use of force

- enhancing the early intervention system to include, among other things, race-based data

- providing greater transparency on officer discipline

- taking proactive investigative steps following decisions of the HRTO and courts of racial profiling, racial discrimination, or violations of the *Charter*

- integrating scenario-based training on anti-Black racism into other training programs with effective evaluation

- developing a distinct policy or procedure on racial profiling.

Some of the OHRC's recommendations require provincewide action, such as:

- Recommendation 87 on limiting officer discretion to approach individuals in non-arrest scenarios)

- Recommendation 88 on Crown pre-charge screening

- Recommendation 91 on a public review of whether there are situations where officers can be deployed with non-lethal weapons instead of guns.

Other recommendations can be acted upon by the TPS and TPSB, although Ontario would benefit if similar actions were taken across the province, such as:

- Recommendations 40–49 on training
- Recommendations 53–60 on data collection.

The OHRC recommends that the TPSB engage with the provincial government accordingly.

Conclusion

This report is the first of its kind. It combines quantitative analysis of hard data with the experiences of Black people, chronicling the extensive and long-standing harm suffered by Black communities as a result of discriminatory policing over many decades. The impacts of such harm at a societal level are incalculable. The evidence of systemic racial discrimination and anti-Black racism cannot be ignored.

To ensure real change, the TPS and TPSB must commit to specific, systemic, and concrete actions that are legally enforceable. The decades of reports and calls for action from Black communities show that if the TPSB and TPS are committed to change, they must legally bind themselves to that change.

The TPS and TPSB can take decisive action to end this cycle. They can build trust with the communities they serve and move *From Impact to Action*.

Endnotes

[1] See Chapter 4 – Consultations with Black communities, community agencies, and police**.**

2 Auditor General of the City of Toronto, "Review of Toronto Police Service – Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022) at 124, online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228234.pdf.

3 See Chapter 4 – Consultations with Black communities, community agencies, and police.

4 See Clare Lewis, *Report of the Race Relations and Policing Task Force* (1989), online: https://archive.org/details/mag_00066901; Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae,* (June 1992) online (pdf): *Special Investigations Unit* www.siu.on.ca/pdfs/report_of_the_advisor_on_race_relations_to_the_premier_of_ontario_bob_rae.pdf; *Report of the Working Group of Experts on People of African Descent on its mission to Canada*, UNGAOR, 36th session, Annex, Agenda Item 9, UN Doc A/HRC/36/60/Add.I (2017), online (pdf): *FBEC* https://fbec-cefn.ca/wp-content/uploads/2019/06/UN-Working-Group-Report_EN.pdf.

5 See The Honourable Gloria J. Epstein, Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations (Toronto: TPSB, 2021).

6 See Appendix 4 for a summary of key reports referenced throughout this report.

7 OHRC, A Collective Impact: Interim Report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (November 2018), online: www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

8 OHRC, A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (10 August 2020), online: www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

9 See Appendix 2 – Racial profiling and the Toronto Police Service.

10 See Appendix 3 – *Addendum Report*.

11 TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022), online: www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf; Appendix C – Glossary of Terms - Enforcement actions were defined as:

   All incident reports of arrests resulting in charges (including released at scene) or released without charges, *Provincial Offences Act* Part III tickets (serious offences), summons, cautions, diversions, apprehensions, and those with the role type of "subject" or "suspect." It *excludes* police interactions related to victims, complainants, witnesses, traffic or pedestrian stops, lower levels of tickets, and parking enforcement.

12 There are two general approaches to law enforcement: proactive policing and reactive policing. Proactive policing typically refers to officers' efforts to initiate and engage in police work in the absence of a service request. Reactive policing commonly takes the form of an officer responding to a call for service from a member of the public.

   Some proactive policing strategies have drawn criticism because of the disproportionate impact on particular segments of the community. TPS street checks are an example of a proactive strategy that has drawn criticism because officers were disproportionately stopping members of Black communities. Proactive policing strategies rely on a far greater degree of police discretion and are more vulnerable to police bias.

   Conversely, reactive policing, such as responding to a call for service, involves very little police discretion and is therefore, less prone to bias.

   See Scot Wortley, *Use of Force by the Toronto Police Service: Final Report* (July 2020) at 72, online (pdf): *OHRC* www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black; British Columbia's Office of

Human Rights Commissioner, *Equity is safer: Human rights considerations for policing reform in British Columbia* (November 2021) at 24 and 43, online: www.bchumanrights.ca/publications/scorpa/.

13 British Columbia's Office of Human Rights Commissioner, *Equity is safer: Human rights considerations for policing reform in British Columbia* (November 2021) at 7 and 24, online: www.bchumanrights.ca/publications/scorpa/.

14 For example, *Abbott v Toronto Police Services Board*, 2009 HRTO 1909; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; *Shaw v Phipps*, 2012 ONCA 155; *R v Ahmed*, [2009] OJ No 5092 (SCJ); *R v K(A)*, 2014 ONCJ 374; *R v Smith*, 2015 ONSC 3548; *R v Thompson*, [2016] O.J. No. 2118 (Ont CJ); *Elmardy v Toronto Police Services Board*, 2017 ONSC 2074.

15 TPS Media Centre (article by Ron Fanfair), "Race-Based Data Shows Over-Policing" (15 June 2022), online: https://www.tps.ca/media-centre/stories/race-based-data-shows-over-policing/; https://www.youtube.com/watch?v=w80pKL3RdMY.

16 TPS Media Centre (article by Ron Fanfair), "Race-Based Data Shows Over-Policing" (15 June 2022), online: https://www.tps.ca/media-centre/stories/race-based-data-shows-over-policing/; https://www.youtube.com/watch?v=w80pKL3RdMY.

17 TPSB, Public Meeting Agenda: Thursday September 19, 2019, (2019) at Race-based Data Collection, Analysis and Public Reporting Appendix A to Public Agenda Item #2, online (pdf): TPSB www.tpsb.ca/images/agendas/PUBLIC_AGENDA_Sep19.pdf.

18 O. Reg 267/18. The TPS's action items include "mandatory reviews of body worn camera and in car camera system for all use of force incidents," the incorporation of "anti-racism and unconscious bias elements into scenario-based and dynamic training … that emphasizes and prioritizes de-escalation", and "training for all members on active by-standership in partnership with the Equity, Inclusion and Human Rights Unit."

19 TPS, Procedure 15-01 Incident Response (Use of force/De-escalation) (June 27, 2022), online: TPS https://www.tps.ca/service-procedures/; TPSB, Draft De-escalation and Appropriate Use of Force Policy (25 January 2022) online: https://www.tpsb.ca/consultations-and-publications/dauf#:~:text=The%20draft%20revised%20Policy%20proposes,will%20trigger%20a%20reporting%20requirement. The TPS's draft use of force policy also prohibits chokeholds. See: TPSB, Draft De-escalation and Appropriate Use of Force Policy (25 January 2022) online: https://www.tpsb.ca/consultations-and-publications/dauf#:~:text=The%20draft%20revised%20Policy%20proposes,will%20trigger%20a%20reporting%20requirement. These documents reflect progress on the implementation of the recommendations from the inquest into the death of Andrew Loku. Such progress also includes: collecting, analyzing and reporting on race-based on use of force, which takes into account person in crisis calls for service. See: TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at Appendix A – Action Plan, online: www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

20 TPSB, Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (2020), online: TPSB https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda. The TPSB and TPS have made progress on their implementation, including mandatory member training on anti-Black racism, the expansion of Mobile Crisis Intervention Teams (MCITS), launches of the Toronto Community Crisis Support Service Pilot and 9-1-1 Crisis Call Diversion Pilot, the acceptance of Auditor General of Toronto's recommendations from its 2022 review of calls for service, and continuation of the TPSB's Anti-Racism Advisory Panel (ARAP) as a permanent advisory committee. See: TPSB, Police Reform Implementation Dashboard, online: TPSB https://tpsb.ca/consultations-and-publications/policing-reform-implementation.

21 See Appendix 1 – Recommendations.

Chapter 1 - Introduction

The evidence collected by the Ontario Human Rights Commission (OHRC) proves conclusively that Black people in Toronto are subjected to systemic anti-Black racism by the Toronto Police Service (TPS).

Concerns have persisted for decades. Members of Toronto's Black community have repeatedly been the victims of discrimination by the TPS, including but not limited to over-policing, arbitrary stops and detention, carding, unlawful searches and seizures, overcharging, and the disproportionate use of force that in some cases resulted in the deaths of Black people.[1]

Over the years, the OHRC has challenged anti-Black racism in policing and advocated for fair and equal treatment of everyone by the TPS.[2]

Until recently, few people were willing to listen, including the TPS and the Toronto Police Services Board (TPSB).

In 2017, using its unique public inquiry powers, the OHRC launched what it titled "An inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service" (Inquiry) – the first of its kind in Canada.

At the outset, the TPS, the TPSB and their leaders continued to deny there was racial profiling and racial discrimination in policing – dismissing these long-held concerns with "a few bad apples" excuse. This was also at a time when there was little or no race-based data collection to measure disparities and hold police services accountable.

The OHRC used its powers to obtain and analyze quantitative and qualitative data from the TPS, TPSB, and the Ontario Special Investigations Unit (SIU). This data was assessed together with the lived experiences of Black communities, information from roundtables, interviews and surveys, previous reviews and reports, and court and tribunal decisions.

The OHRC issued two interim reports, *A Collective Impact* (2018) and *A Disparate Impact* (2020). These reports proved overwhelmingly that Black people were more likely than others to be stopped, searched, arrested, charged, overcharged, struck, shot, and killed by the TPS. The existence of anti-Black racism by the TPS could no longer be denied.

In June 2022, following the interim reports and a TPS internal review, the TPS acknowledged that systemic racism has led to differential treatment and over-policing of racialized communities, particularly Black and Indigenous communities. Speaking at a news conference, then-Interim Police Chief James Ramer apologized and acknowledged the TPS must act to address this problem:

> We must improve and we will do better … As challenging as our findings are, this day presents an opportunity for us to be better and to do better. In fact, because our legitimacy is tied to public trust, it tells us that we must be better. On behalf of my Command as the leaders of this organization, we take full responsibility.[3]

The TPS and TPSB have already taken some positive steps. They consulted with the OHRC on specific initiatives to begin to act on the Inquiry's earlier findings. This includes passing a Policy on Race-Based Data Collection, Analysis and Public Reporting in 2019 (TPSB), analyzing and publishing data on use of force and strip searches in 2022 (TPS), and developing a new draft use-of-force policy (TPSB) and new use-of-force procedure (TPS) in 2022 that will emphasize de-escalation, require officers to intervene when they see other officers use inappropriate or excessive force, and prohibit chokeholds among other things.

The TPS and TPSB have also committed to and made progress on other reforms. These include mandatory training and education on anti-Black racism, expanding alternative responses to calls for service such as Mobile Crisis Intervention Teams (MCITS), accepting the Auditor General of Toronto's recommendations from its 2022 review of calls for service,[4] and making the TPSB's Anti-Racism Advisory Panel (ARAP) a permanent advisory committee. The TPS and TPSB have also made further efforts to engage and consult with the OHRC.

While these reforms are welcome, more can and must be done to effect long-term, sustainable change. This final report, *From Impact to Action*, builds on our previous findings and identifies the ways in which current TPS culture, gaps in policies, procedures, training and education, and lack of accountability mechanisms contribute to systemic anti-Black racism. It identifies 107 recommendations for additional actions the TPS, TPSB and, in some cases, the Province of Ontario must take to address systemic anti-Black racism, ensure accountability, and ultimately improve outcomes for Black communities.

Policing is complex. The police are often called upon to deal with situations for which they are not equipped. The OHRC recognizes the TPS has "become the default response in some situations when alternative non-police responses are not in place or not available when needed."[5] The situations and circumstances faced by front-line officers daily can result in tremendous pressure and strain.

From Impact to Action identifies ways the police can be better prepared and supported in policies, procedures, training, education, and resources to protect against anti-Black racism in policing. It also recognizes the widespread consensus that some of the tasks that currently fall on TPS officers should be done by others with appropriate funding for these non-police responses.

This report builds on previous findings and recommendations by the OHRC and others. It reflects Black communities' demands for change. It recognizes recent steps the TPS and TPSB have taken to begin addressing systemic racism and improving accountability. Most importantly, however, this report identifies where gaps still exist and what remains to be done by the TPS and TPSB to act on their promise to take full responsibility, do better, and move *From Impact to Action*.

Chapter 1 - Endnotes

[1] See Appendix 4 – Summary of reports.

[2] See Appendix 6 – Timeline of racial discrimination and racial profiling of Black persons by the Toronto Police Service and OHRC initiatives related to the Toronto Police.

[3] Ron Fanfaire, "Race-Based Data Shows Over-Policing," Toronto Police Service (15 June 2022), online: https://www.tps.ca/media-centre/stories/race-based-data-shows-over-policing/.

[4] Beverly Romeo-Beehler, Auditor General of the City of Toronto, Toronto Police Service – *Audit of 9-1-1 Public Safety Answering Point Operations: Better Support for Staff, Improved Information Management and Outcomes* (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228260.pdf.

[5] Beverly Romeo-Beehler, Auditor General of the City of Toronto, *Review of Toronto Police Service – Opportunities to Support More Effective Responses to Calls for Service* (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228234.pdf.

Chapter 2 - Inquiry scope and process

OHRC's mandate, past findings, and rationale for an inquiry into anti-Black racism in Toronto policing

The OHRC is mandated to promote and enforce human rights compliance and accountability, expose and challenge systemic discrimination, and examine incidents or conditions of tension or conflict from a human rights perspective. The OHRC does this through education, policy development, public inquiries, and strategic litigation.[1]

The OHRC has a unique power to hold systemic inquiries in the public interest under section 31 of the *Human Rights Code*. This includes the power to request documents and data, question people on matters that may be relevant to an inquiry, and use the help of experts to analyze the information and issue findings and recommendations.[2]

The information obtained in a section 31 inquiry may be used as evidence in a proceeding before the Human Rights Tribunal of Ontario (HRTO). However, the OHRC does not have the same power as the HRTO to make legally binding findings of discrimination or to order remedies.

Combatting racial profiling and discrimination in policing has been at the core of the OHRC's work for almost 20 years. The OHRC has issued multiple reports identifying and seeking to eliminate racial discrimination in policing. They include:

2003: *Paying the Price*, a report that defined racial profiling and described its effects[3]

2017: *Under Suspicion*, a research and consultation report on racial profiling[4]

2019: Policy on eliminating racial profiling in law enforcement[5]

2021: *Framework for change to address systemic racism in policing*,[6] which calls on Ontario to establish a legislative and regulatory framework to directly address systemic racial discrimination in policing across the province.[7]

The OHRC has created resources to help police services identify, monitor, and reduce racial discrimination, including guides to collecting human rights-based data and creating organizational change.

The OHRC has made submissions to the government and independent reviewers advocating for changes in laws to promote accountability for systemic discrimination in policing, address street checks (also known as carding), and make communities safer.[8] In 2022, the OHRC provided a submission to the Solicitor General on human rights-based data collection, analysis, and reporting on use of force.[9] Over the years, the OHRC has also engaged in strategic litigation challenging racial discrimination in policing.[10]

The OHRC has worked directly with the TPS and TPSB on issues of discrimination. In 2007, the OHRC entered into a three-year Human Rights Project Charter (Project Charter) with the TPS and TPSB, which aimed to embed human rights in all aspects of police operations.[11] The OHRC's role was to "provide advice to the TPSB and TPS regarding their ongoing change initiatives, assist in the development of target change objectives, and to report on the progress of the TPSB and the TPS in relation to these initiatives."[12]

The OHRC did not have control over developing, prioritizing, or implementing the recommendations. As a result, the Project Charter did not enhance independent monitoring or accountability for systemic racial discrimination.

The OHRC was involved with the TPS throughout various stages of the Police and Community Engagement Review (PACER), which began in 2012 and led to a 2013 report that identified 31 recommendations intended to ensure fair and bias-free policing.[13] When the report was released, the OHRC took part in a community consultation committee to support implementing the report's recommendations, and provided direct input into specific initiatives that emerged. The OHRC's participation on the committee continued until 2018. Before and during the Inquiry, the OHRC made deputations urging the TPSB to address racial discrimination.[14]

In 2017, the OHRC launched this extensive Inquiry into racial discrimination and racial profiling by the Toronto police because, despite previous efforts by the OHRC and sustained pressure from Black communities, the TPS had failed to make substantial progress.[15]

The Inquiry focused on the TPS because it is the largest municipal police service in Canada,[16] and Toronto is home to the largest Black population in Canada.[17] However, the OHRC recognizes there is systemic racism in policing across Ontario[18] affecting more than just Black communities, and that the TPS and TPSB have pledged to be leaders in change.[19] This is noteworthy because the OHRC expects that this report will have an impact on policing beyond Toronto and Black communities.

The TPS and TPSB have taken important steps since the Inquiry was launched to implement many of the policies and procedures recommended by the OHRC and others to eliminate anti-Black racism in policing. This report provides additional recommendations to the police to further guide and support them in making the necessary changes.

The Inquiry experts

The OHRC retained Dr. Scot Wortley (Professor and Graduate Coordinator, Centre for Criminology & Sociolegal Studies, University of Toronto) to provide expert assistance with the Inquiry.

Dr. Wortley's expertise includes racial profiling and social science methodology. His research on race and policing has been published extensively, including in peer-reviewed journals.[20] He has worked with public sector institutions, including the Commission on Systemic Racism in the Ontario Criminal Justice System, the Ontario Roots of Youth Violence Inquiry, the Ontario Anti-Racism Directorate, and the Nova Scotia Human Rights Commission.[21] Dr. Wortley has worked with the Halifax police and police services to study racial disparities. Dr. Wortley has also been qualified as an expert witness by the Ontario Superior Court of Justice, Canadian Human Rights Tribunal, and HRTO.[22]

Dr. Wortley was assisted by Dr. Ayobami Laniyonu[23] (Assistant Professor, Centre for Criminology and Sociolegal Studies, University of Toronto) and Erick Laming[24] (PhD student, Centre for Criminology and Sociolegal Studies, University of Toronto) in analyzing use-of-force data, and by Dr. Maria Jung[25] (Assistant Professor, Faculty of Criminology, Toronto Metropolitan University) in analyzing arrest, charge, and release data. The OHRC also independently retained Dr. Jung to review a coding error that affected the multivariate analysis of use of force in *A Disparate Impact*, which has since been corrected – see link in footnote.[26]

Information-gathering from the police and Special Investigations Unit

The OHRC requested a broad range of documents and data from the TPS, TPSB, and Special Investigations Unit (SIU) for the period between January 1, 2010 and June 30, 2017.[27] The Inquiry focused on particular activities during this period to determine their impact on Black communities, including stop-and-search practices, use of force, arrests and charges, and forms and conditions of release for various offence categories. The OHRC also examined post-2017 data on TPS stop-and-question practices, as well as the TPS's analysis of 2020 race-based data on use of force and strip searches.

The OHRC reviewed case law, policies, procedures, training documents, anti-racism initiatives, accountability mechanisms, and TPS and TPSB reports. This included thousands of pages of TPS and TPSB documents. The references to TPS and TPSB initiatives and materials in this report are current at time of writing (July 2023). However, we recognize that the TPS or TPSB may have updated relevant initiatives or undertaken new ones that are not reflected in this report.

The OHRC interviewed members of TPS senior command, including former Chief of Police Mark Saunders, former Interim Chief James Ramer, and current Chief Myron Demkiw (who at the time was Staff Superintendent of Corporate Risk Management), a former member of the TPSB, and the Chair and Executive Director of the TPSB. The TPSB also provided written responses to OHRC questions. The OHRC interviewed the civilian Co-Chairs of the TPSB's Mental Health and Addictions Advisory Panel (MHAAC) and the former Community Co-Chair of the TPSB's Anti-Racism Advisory Panel (ARAP).

In December 2019 and March 2021, the OHRC invited TPS officers to share their thoughts on the Inquiry and related areas. Only five officers agreed to be interviewed or provided detailed feedback. The OHRC also interviewed two former officers and one current officer who responded to the OHRC's public call at the Inquiry launch in 2017.

In 2022, the OHRC sent the TPA – the organization that represents "almost 8,000 uniform and civilian members of the TPS"[28] – a series of questions and received a written response. The OHRC then held a roundtable interview with senior TPA leadership.

The OHRC conducted a confidential and voluntary online survey of TPS uniform officers below the rank of inspector. The survey was open between October 12 and 26, 2022. Officers were invited to share their perspectives on issues of racism, particularly anti-Black racism, both within the TPS and in officer interactions with civilians. One hundred and thirteen officers provided complete responses to the survey.

Uniform and civilian members of the Black Internal Support Network (BISN), an employee resource group of the TPS, were interviewed. Interviews explored BISN members' experiences of anti-Black racism within the TPS, police culture, training, policies, procedures, accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities.

The OHRC provided the TPS and TPSB with a confidential draft copy of this report for their review and response prior to its release.

The OHRC appreciates the participation of rank-and-file officers, including Black officers, who shared their perspectives. We would also like to thank the TPS, TPSB, and TPA leadership and the volunteers who make up their advisory committees, including the TPSB's Anti-Racism Advisory Panel (ARAP) and Mental Health and Addictions Advisory Committee (MHAAP), for their time and cooperation with the Inquiry.

Outreach to Black communities and organizations

At the Inquiry launch, the OHRC committed to "receive information from affected individuals, interested groups and organizations."[29] This included members of Black communities, Black community and advocacy groups, and Black police officers.[30]

Working with several organizations across Toronto that serve Black communities and/or challenge anti-Black racism, the OHRC held focus groups and gathered Black persons' lived experiences with the TPS that fell within the scope of the Inquiry. The OHRC met with approximately 190 individuals from Black communities. Their experiences and perspectives on how the Toronto police should address anti-Black racism are described throughout this report.

Organizations that assisted with outreach included:

- Across Boundaries
- Black Action Defence Committee
- Black Legal Action Centre
- Black Muslim Initiative
- Canadian Association of Black Lawyers (CABL)
- Canadian Civil Liberties Association
- Centre Francophone du Grand Toronto
- Colour of Poverty – Colour of Change
- Community Legal Aid Services Program of Osgoode Hall Law School
- For Youth Initiative
- Human Rights Legal Support Centre
- Jamaican Canadian Association
- Midaynta Community Services
- Ontario Justice Education Network
- Provincial Advocate for Children and Youth & HairStory (since discontinued)

- Rathburn Area Youth Program
- Rexdale Community Hub
- Rexdale Community Legal Clinic
- Success Beyond Limits
- Urban Alliance on Race Relations.

The OHRC also consulted with Black community leaders on its recommendations to the TPS and TPSB. The questions for each consultation were tailored to the knowledge and expertise of each community leader/organization. Leaders included:

- Fareeda Adam (Lawyer, Black Legal Action Centre)
- Brittany Amofah (Board member, Urban Alliance on Race Relations)
- Jacqueline Edwards (President, Association of Black Law Enforcers)
- Louis March (Founder, Zero Gun Violence)
- Samantha Peters (Lawyer, researcher and educator at the University of Ottawa Faculty of Law)
- Aseefa Sarang (Across Boundaries)
- Dr. Sam Tecle (Jane-Finch Action Against Poverty/Toronto Metropolitan University
- Lori Anne Thomas (then-President, CABL, before being appointed to the Ontario Court of Justice) and Jaqueline Beckles (Secretary, CABL).

For some participants, recounting their experiences meant reliving trauma. And for many, the Inquiry represented yet another attempt to study anti-Black racism in policing, which contributes to "study fatigue." The OHRC is grateful for the time, patience, participation, strength, and courage of members of Black communities who spoke to us, and is committed to ensuring this report results in real change.

Research and roundtable

In May 2022, the OHRC, TPS and TPSB held a policy roundtable to discuss important systemic issues identified during the Inquiry, and to consider recommendations for change.

Participants included community members, government, policing, other stakeholders, academics and additional experts. Issues explored included: discipline, data collection, training and education, the nature and extent of discriminatory exercise of discretion and the role of Crown counsel, use of force, accountability, and enforcement mechanisms.

The OHRC also conducted follow-up interviews with some roundtable participants to gather additional information and perspectives. They included:

- Roy Austin Jr. (Vice President of Civil Rights, Deputy General Counsel and former Deputy Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice)
- Paul Bailey (Executive Director, Black Health Alliance)
- Nigel Barriffe (President, Urban Alliance on Race Relations)
- David Bosveld (Founder, Black Education Fund)
- Sarah Caldwell (then-Director of Community Safety and Intergovernmental Affairs, Ontario Ministry of the Solicitor General)
- Jennifer Chambers (Executive Director, Empowerment Council)
- James Cornish (Strategic Advisor, TPS)
- Myron Demkiw (then-Acting Deputy Chief, TPS)
- Abby Deshman (Lawyer & Director of the Criminal Justice Program, Canadian Civil Liberties Association)
- Paula Di Nota, PhD (Post-Doctoral Research Fellow, University of Toronto)
- Danielle Dowdy (Senior Advisor, TPSB)
- Nishan Duraiappah (Chief, Peel Regional Police)
- Jacqueline Edwards (President, Association of Black Law Enforcers)
- Todd Foglesong (Fellow-in-Residence, Munk School of Global Affairs & Public Policy)
- Nadia Gouveia (Acting Chief Operating Officer, Toronto Community Housing)
- Jim Hart (then-Chair, TPSB)
- Dan Kinsella (Chief, Halifax Regional Police)
- Patricia Kosseim (Ontario Information Privacy Commissioner)
- Bryan Larkin (then-Chief of Police, Waterloo Regional Police Service)
- Stephen Leach (Director, Ontario Independent Police Review)
- Andrew Locke (Director, Crown Operations, Ontario Ministry of the Attorney General)
- Andy Marsh (Chief Constable and Chief Executive Officer, U.K. College of Policing)

- Stephen McCammon (Legal Counsel, Ontario Information Privacy Commission)
- Antje McNeely (Chief, Kingston Police Service)
- Stephen Menseh (Executive Director, Toronto Youth Council)
- Ainsworth Morgan (then- Co-Chair, TPS ARAP)
- Anthony Morgan (then- Co-Chair, TPS ARAP)
- Anthony Odoardi (Deputy Chief, Peel Regional Police)
- Kike Ojo-Thompson (EDI Consultant, Executive Director of KOJO Institute)
- James Ramer (then-Chief of Police, TPS)
- Clinton Reid (Founder, Collective Impact)
- Jon Reid (President, TPA)
- Declan Sullivan (Program Associate, Georgetown Law Center for Innovations in Community Safety)
- Dr. Sam Tecle (Assistant Professor of Sociology, Toronto Metropolitan University)
- Moya Teklu (then-Executive Director, Black Legal Action Centre)
- Ryan Teschner (then- Executive Director and Chief of Staff, TPSB)
- Matt Torigian (Distinguished Fellow, Munk School of Global Affairs and former Chief of Police for Waterloo Regional Police Service)
- Larry Vieira (General Counsel, TPA)
- Ken Weatherill (Inspector of General Policing, Ministry of the Solicitor General)
- Ian Williams (Director of Information Management, TPS)
- Nana Yanful (Legal Director of Black Legal Action Centre).
- Prior to the roundtable, the OHRC also interviewed Joseph Martino, Director of the SIU.

The OHRC researched best practices from Canada, the United States, and the United Kingdom to identify, monitor, and address racial profiling, racial discrimination, and anti-Black racism in policing. This included reviewing recommendations made by previous inquests and reports.

For more information about the Inquiry scope and process, see Appendices 5 (Methodology), 7 (Terms of reference), and 10 (Inquiry letters).

Progress during the Inquiry

In 2018, the OHRC released its interim report, *A Collective Impact*. It analyzed the data the OHRC had obtained from the SIU and found that Black people were overrepresented in use-of-force cases involving serious injury, shootings, deadly encounters, and fatal shootings.

A Collective Impact reviewed court and tribunal findings of racial discrimination by the TPS. It also reviewed SIU Director Reports that raised concerns of potential TPS officer misconduct such as illegal stops and/or detentions at the beginning of civilian encounters, inappropriate or unjustified searches, meritless charges, and lack of police cooperation during SIU investigations.

A Collective Impact also included the results of the OHRC's consultation with 130 members of Black communities across Toronto. It documented Black communities' fear, trauma, expectations of negative treatment, and lack of trust of the police.

The findings in this first report were very troubling and continue to garner public attention. In *R v Le*, the Supreme Court of Canada recognized *A Collective Impact* as credible and highly authoritative.[31] In *R v Morris*, the Court of Appeal for Ontario cited *A Collective Impact* when recognizing anti-Black racism in the criminal justice system.[32]

In response to *A Collective Impact*, the TPS and TPSB recognized that:

> There are those within Toronto's Black communities who feel that, because of the colour of their skin, the police, including when it comes to use of force, have at times, treated them differently.[33]

The OHRC is pleased that the TPSB accepted the OHRC's recommendation to collect and publicly report race-based data. The TPSB consulted with the OHRC and communities, and in 2019 passed its Policy on Race-Based Data Collection, Analysis and Public Reporting, which requires race-based data collection, analysis, and reporting on a wide variety of interactions.[34]

In August 2020, the OHRC released its second interim report. *A Disparate Impact* looked at racial disparities in charges and arrests between 2013 and 2017 for offences that involve significant police discretion. It found that Black people were grossly[35] overrepresented in discretionary, lower-level charges.

A Disparate Impact also analyzed lower-level uses of force between 2016 and 2017, and found that Black people were markedly more likely to experience all types of police use of force compared to their White counterparts. These gross racial disparities remained after controlling for patrol zone characteristics, including violent crime rate, median household income, and proportion of single-mother households.

When *A Disparate Impact* was released, there was broader momentum in acknowledging anti-Black racism in policing. The murder of George Floyd in the United States a few months prior had awakened public consciousness and forced many police services to acknowledge systemic racism.

In the face of those events, the TPSB conducted a series of town halls and adopted 81 recommendations from its 2020 report on *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (*Police Reform* Report).[36]

In 2021, the TPSB also welcomed the OHRC's release of its *Framework for change to address systemic racism in policing,* which called for urgent provincial leadership to address systemic racial discrimination in policing across the province. The TPSB "applaud[ed] the recognition by the OHRC that some of the systemic issues in policing require the engagement of other levels of governments that hold the required legislative levers."[37]

In 2022, the TPS released its analysis of its 2020 race-based data on use of force. The TPS went beyond what was required in the *Anti-Racism Act* and, as noted earlier, acknowledged and apologized for systemic racism and committed to do better.

The TPS introduced 38 new action items as "one part" of their commitment to reduce disparate outcomes. These include mandatory reviews of body-worn and in-car camera footage for all use-of-force incidents. Another initiative is incorporating anti-racism and unconscious bias elements into scenario-based and dynamic training that emphasize de-escalating a situation before resorting to force.[38]

The TPS and TPSB have also adopted a more collaborative and consultative approach with communities and the OHRC. During the Inquiry, the TPS and/or the TPSB consulted the OHRC on, among other things:

- TPSB's policy on race-based data collection, analysis and reporting

- TPS's analysis of 2020 race-based data on use of force and strip searches, and the TPS's resulting action items

- TPSB's policy and TPS's procedure on body-worn cameras

- TPSB's policy on the use of artificial intelligence technology

- TPS's new use-of-force procedure and TPSB's draft-use-of-force policy.

The OHRC continues to monitor progress by the TPS and TPSB on the steps they have agreed to take to address systemic anti-Black racism in policing.

These developments are a positive beginning. This report identifies recommendations for many additional important changes that the TPS and TPSB must commit to if anti-Black racism in policing is to be demonstrably reduced or eliminated.

Chapter 2 Endnotes

[1] OHRC, *Strategic Plan 2023–2025 – Human Rights First: A plan for belonging in Ontario* (Toronto: OHRC) at 2, online (pdf): https://www3.ohrc.on.ca/sites/default/files/Strategic%20Plan%20Human%20Rights%20First%20ENGLISH%20-%20OHRC%202023-25.pdf; *Human Rights Code*, RSO 1990, c H19, s 29.

[2] *Human Rights Code*, RSO 1990, c H19, s 31.

[3] OHRC, *Paying the Price: The Human Cost of Racial Profiling – Inquiry Report* (Toronto: OHRC, 2003), online (pdf): www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf.

[4] OHRC, *Under Suspicion: Research and consultation report on racial profiling in Ontario* (Toronto: OHRC, 2017), online: www.ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario.

[5] OHRC, *Policy on eliminating racial profiling in law enforcement* (Toronto: OHRC, 2019), online: https://www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement; see also OHRC, *Human rights and policing: Creating and sustaining organizational change* (Toronto: OHRC, 2011), online: www.ohrc.on.ca/en/human-rights-and-policing-creating-and-sustaining-organizational-change; OHRC, *Count me in! Collecting human rights-based data* (Toronto: OHRC, 2009), online (pdf): https://www3.ohrc.on.ca/sites/default/files/attachments/Count_me_in%21_Collecting_human_rights_based_data.pdf; OHRC, *Policy and guidelines on racism and racial discrimination* (Toronto: OHRC, 2005), online (pdf): www.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf.

[6] OHRC, *Framework for change to address systemic racism in policing* (29 July 2021), online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

[7] The TPSB welcomed the call for provincial reform in the OHRC's *Framework for change to address systemic racism in policing*. The TPSB "applaud[ed] the recognition by the OHRC that some of the systemic issues in policing require the engagement of other levels of governments that hold the required legislative levers." TPSB, "Statement from the Toronto Police Services Board regarding release of OHRC's *Framework for change to address systemic racism in policing*" (2021), online: https://tpsb.ca/media-mobile/news-release-archive/listid-2/mailid-233-statement-on-ohrcs-framework-for-change.

[8] Submissions include:

- OHRC, "OHRC Submission to the Independent Street Checks Review" (1 May 2018), online: www.ohrc.on.ca/en/ohrc-submission-independent-street-checks-review.
- OHRC, "OHRC Submission to the Independent Review of Police Oversight Bodies" (15 November 2016), online: www.ohrc.on.ca/en/ohrc-submission-independent-review-police-oversight-bodies.
- OHRC, "OHRC Submission to the Ministry of Community Safety and Correctional Services" (29 April 2016), online: www.ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs.
- OHRC, "OHRC Submission to the Ministry of Community Safety and Correctional Services on street checks" (11 August 2015), online: www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks.
- OHRC, "OHRC submission to the Office of the Independent Police Review Director's systemic review of OPP practices for DNA sampling" (April 2014), online: www.ohrc.on.ca/en/ohrc-submission-office-independent-police-review-director%E2%80%99s-systemic-review-opp-practices-dna.
- OHRC, "Submission of the OHRC to the Independent Review of the use of lethal force by the Toronto Police Service" (February 2014), online: www.ohrc.on.ca/en/submission-ontario-human-rights-commission-independent-review-use-lethal-force-toronto-police.
- OHRC, "Submission of the OHRC to the Ombudsman's Investigation into the direction provided to police by the Ministry of Community Safety and Correctional Services for de-escalating conflict situations" (July 2014), online: www.ohrc.on.ca/en/submission-ohrc-ombudsman%E2%80%99s-investigation-direction-provided-police-ministry-community-safety-and.

[9] OHRC, "OHRC letter and submission on the Equipment and Use of Force Regulatory Amendment and Implementation of Modernized Use of Force Report" (30 October 2022), online: https://www.ohrc.on.ca/en/ohrc-submission-ministry-solicitor-general-equipment-and-use-force-regulation-amendment-and.

[10] See Kampe v Toronto Police Services Board, 2008 HRTO 304; *Yousufi v Toronto Police Services Board*, 2009 HRTO 351; *Shaw v Phipps*, 2010 ONSC 3884, aff'd 2012 ONCA 155; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; OHRC, "OHRC intervenes in racial profiling and discriminatory use of force case" (1 February 2016), online: www.ohrc.on.ca/en/news_centre/ohrc-intervenes-racial-profiling-and-discriminatory-use-force-case; OHRC, "OHRC calls on police prosecutor to address racial profiling in Neptune 4 case" (11 June 2016), online: www.ohrc.on.ca/en/news_centre/ohrc-calls-police-prosecutor-address-racial-profiling-neptune-4-case; OHRC, "OHRC seeks leave to intervene in racial profiling case" (2 June 2015), online: www.ohrc.on.ca/en/news_centre/ohrc-seeks-leave-intervene-racial-profiling-case; Samantha Beattie, "Black Metrolinx workers fired for failing background checks make their case before human rights tribunal", CBC News (3 June 2021), online: https://www.cbc.ca/news/canada/toronto/metrolinx-toronto-police-background-checks-1.6050296; *Aiken v Ottawa* Police Services Board, 2013 HRTO 901; OHRC, "OHRC Response to the Race Data and Traffic Stops in Ottawa Report" (28 November 2016), online: https://www.ohrc.on.ca/en/ohrc-response-race-data-and-traffic-stops-ottawa-report.

[11] Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014), online (pdf): www.ryerson.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

[12] OHRC, "Human Rights Project Charter – TPS & TPSB" (17 May 2007)*, online (pdf): https://www.ohrc.on.ca/en/human-rights-project-charter-tps-tpsb/background.

[13] TPS, *The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report and Recommendations* (Toronto: TPS, 2013), online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.

[14] Deputations:

OHRC, "Deputation to Toronto Police Services Board re: community contacts policy" (24 April 2014), online: www.ohrc.on.ca/en/news_centre/deputation-toronto-police-services-board-re-community-contacts-policy-april-24-2014.

OHRC, "Toronto Police Service racial profiling and carding: OHRC deputation at November 18, 2013 public meeting inviting public comment on PACER report and Mukherjee report" (18 November 2013), online: www.ohrc.on.ca/en/news_centre/tps-racial-profiling-and-carding-ohrc-deputation-november-18-2013-public-meeting-inviting-public.

OHRC, "OHRC Written Deputation on: Policy on Community Engagements Procedure 04-14: Community Engagements" (2 April 2015), online: www.ohrc.on.ca/en/news_centre/ohrc-written-deputation-policy-community-engagements-procedure-04-14-community-engagements.

OHRC, "Toronto Police Service racial profiling and carding: deputation to Toronto Police Services Board" (8 April 2014), online: OHRC www.ohrc.on.ca/en/news_centre/toronto-police-service-racial-profiling-and-carding-deputation-toronto-police-services-board.

OHRC, "Deputation by Interim Chief Commissioner Ruth Goba – Toronto Police Services Board" (17 June 2015), online: www.ohrc.on.ca/en/news_centre/deputation-interim-chief-commissioner-ruth-goba-toronto-police-services-board-june-18-2015.

OHRC, "Deputation to the Toronto Police Services Board regarding the Toronto Police Services Board's Anti-Racism Advisory Panel" (14 December 2018), online: www.ohrc.on.ca/en/news_centre/deputation-toronto-police-services-board-regarding-toronto-police-services-board's-anti-racism.

OHRC, "OHRC Written Deputation to the Toronto Police Services Board re: Policy on Race-Based Data Collection, Analysis and Public Reporting" (19 September 2019), online: www.ohrc.on.ca/en/news_centre/ontario-human-rights-commission-written-deputation-toronto-police-services-board-re-policy-race.

OHRC, "OHRC written deputation to the Toronto Police Services Board re: Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety" (18 August 2020), online: www.ohrc.on.ca/en/ohrc-written-deputation-toronto-police-services-board-re-police-reform-toronto-systemic-racism.

OHRC, Deputation to the Toronto Police Services Board by Chief Commissioner DeGuire (22 June 2022).

[15] OHRC, "OHRC launches public interest inquiry into racial profiling and racial discrimination by the Toronto Police Service" (30 November 2017), online: www.ohrc.on.ca/en/news_centre/ohrc-launches-public-interest-inquiry-racial-profiling-and-racial-discrimination-toronto-police; See Appendix 7 – Terms of reference (30 November 2017), online: https://www.ohrc.on.ca/en/terms-reference-tps Terms%20of%20Reference%20Ontario%20Human%20Rights%20Commission:%20https://www.ohrc.on.ca/en/terms-reference-tps%20.

[16] Statistics Canada, "Table 3-2, Police officers and crime rates – Police officers in the 30 largest municipal police services" (2012), online: www150.statcan.gc.ca/n1/pub/85-225-x/2012000/t004-eng.htm.

[17] Statistics Canada, "Diversity of the Black population in Canada: An overview" (2019), online: www150.statcan.gc.ca/n1/daily-quotidien/190227/dq190227d-eng.htm.

[18] OHRC, *Framework for change to address systemic racism in policing* (29 July 2021), online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

[19] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Chair Jim Hart regarding Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020) at 7, online (pdf): https://tpsb.ca/images/agendas/PUBLIC_AGENDA_Aug_18.pdf.

[20] Dr. Wortley has been qualified as an expert by the Ontario Superior Court of Justice, Canadian Human Rights Tribunal and Human Rights Tribunal of Ontario – see *Smith v Canada Customs and Revenue Agency*, [2004] OJ No 3410 at para 70; *R v Douse*, [2009] OJ No 2874 at para 104; *Tahmourpour v Royal Canadian Mounted Police*, 2008 CHRT 10 at para 31; *Nassiah v Peel (Regional Municipality) Services Board*, 2007 HRTO 14 at para 110; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220 at paras 139, 142. See also University of Toronto, "Faculty Directory: Scot Wortley", online: https://www.crimsl.utoronto.ca/people/directories/all-faculty/scot-

wortley. See also Nova Scotia Human Rights Commission, "Independent Expert to Examine Police Street Check Data, Biography: Scot Wortley, PhD" (18 September 2017), online: https://humanrights.novascotia.ca/news-events/news/2017/independent-expert-examine-police-street-check-data.

[21] University of Toronto, "Faculty Directory: Scot Wortley," online: https://www.crimsl.utoronto.ca/people/directories/all-faculty/scot-wortley. See also Nova Scotia Human Rights Commission, "Independent Expert to Examine Police Street Check Data, Biography: Scot Wortley, PhD" (18 September 2017), online: https://humanrights.novascotia.ca/news-events/news/2017/independent-expert-examine-police-street-check-data.

[22] See *Smith v Canada Customs and Revenue Agency,* [2004] OJ No 3410 at para 70; *R v Douse*, [2009] OJ No 2874 at para 104; *Tahmourpour v Royal Canadian Mounted Police*, 2008 CHRT 10 at para 31; *Nassiah v Peel* (Regional Municipality) Services Board, 2007 HRTO 14 at para 110; *Maynard v Toronto Police Services Board 2012 HRTO 1220* at paras 139, 142. See also University of Toronto, "Faculty Directory: Scot Wortley", online: https://www.crimsl.utoronto.ca/people/directories/all-faculty/scot-wortley. Dr. Wortley received assistance from Dr. Ayobami Laniyonu (Assistant Professor, Centre for Criminology and Sociolegal Studies, University of Toronto) and Dr. Erick Laming (Assistant Professor, Department of Sociology, Trent University) with analyzing use of force data, and Dr. Maria Jung (Assistant Professor, Faculty of Criminology, Toronto Metropolitan University [formerly Ryerson University]) with analyzing arrest, charge and release data.

[23] University of Toronto, "Faculty Directory: Dr. Ayobami Laniyonu," online: https://www.crimsl.utoronto.ca/people/directories/all-faculty/ayobami-laniyonu; Curriculum vitae of Dr. Ayobami Laniyonu, online: https://ayobamilaniyonu.files.wordpress.com/2021/08/cv-09.2021-1.pdf.

[24] Trent University, "Faculty Directory: Dr. Erick Laming," online: https://www.trentu.ca/criminology/faculty-research/erick-laming.

[25] Toronto Metropolitan University, "Faculty Directory: Dr. Maria Jung," online: https://www.torontomu.ca/criminology/people/faculty-directory/jung-maria/.

[26] OHRC, "Correction to *A Disparate Impact*" (26 January 2023), online: https://www.ohrc.on.ca/en/correction-disparate-impact.

[27] See Appendix 7 – Terms of reference (30 November 2017), online: https://www.ohrc.on.ca/en/terms-reference-tps and Appendix 10 – Inquiry letters.

[28] Toronto Police Association online: https://tpa.ca/who-we-are/

[29] See Appendix 7 – Terms of reference.

[30] The OHRC recognizes the vulnerability of affected individuals, the sensitivity of the information it received during the Inquiry, and the importance of protecting personal information. The OHRC developed and implemented a Protection of personal information and privacy safeguards policy in response to these concerns. See Appendix 9 – Protection of personal information and privacy safeguards. The policy is also available online: OHRC, "Protection of personal information and privacy safeguards policy" (6 November 2017), online: https://www.ohrc.on.ca/en/protection-personal-information-and-privacy-safeguards-policy-tps.

[31] *R v Le*, 2019 SCC 34 at paras 89–97.

[32] *R v Morris*, 2021 ONCA 680 at para 1.

[33] Samantha Beattie, "Toronto Police Continue To Disproportionately Shoot, Kill And Use Force On Black People: Report", *Huffington Post* (10 December 2018), online: https://www.huffpost.com/archive/ca/entry/toronto-police-anti-black-racism_ca_5cd57ce9e4b07bc729788862.

[34] TPSB, "Minutes of Public Meeting: September 19, 2019" (19 September 2019), Appendix A of the Report from Chair Andy Pringle regarding "Toronto Police Services Board's Race-Based Data Collection Policy" (10 September 2019) at 16, online (pdf): www.tpsb.ca/images/agendas/PUBLIC_AGENDA_Sep19.pdf.

[35] For the purposes of this report, Dr. Wortley et al state: "a gross racial disparity exists when the level of over-representation is 200% or greater (i.e., as indicated by an odds ratio of 3.00 or higher)." See Chapter 3 – Anti-Black racism in policing: subsection: Additional Benchmarking of TPS Use of Force and Charge Data (*Addendum Report*), and Appendix 3 – *Addendum Report*.

[36] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Chair Jim Hart regarding Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020) at 7, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[37]TPSB, News release: https://tpsb.ca/media-mobile/news-release-archive/listid-2/mailid-233-statement-on-ohrcs-framework-for-change.

[38] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (Toronto: TPS, 2022) at 92–100, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

Chapter 3 - Anti-Black racism in policing

This chapter summarizes the evidence gathered and analyzed during the Inquiry. The evidence involves the OHRC's consultations with Black communities and policing experts, and the data analyzed by Dr. Scot Wortley and his team. It conclusively confirms the existence of anti-Black racism within the TPS.

The evidence includes:

- voices from Black communities
- reports on anti-Black racism
- OHRC and TPS statistical analyses
- voices of TPS officers
- the courts
- TPS acknowledgement of anti-Black racism.

The TPS has acknowledged anti-Black racism within the Service and apologized to the Black communities of Toronto. Acceptance of anti-Black racism as an established fact is the first step on the path from impact to action.

The Inquiry's focus is not on individual TPS officers, but rather the effects of the policing system on Black communities. However, individual officer bias and stereotyping can be related to systemic racial discrimination, racial profiling, and anti-Black racism. The failure to properly account for and address racial profiling and racial discrimination arising from an individual's bias can also have a broader, systemic impact.

Voices from Black communities

Members of Black communities in Toronto have long identified and protested anti-Black racism in policing. For decades, their voices were ignored when they should have been heard, respected, and acted upon.

As part of this Inquiry, the OHRC met with approximately 190 individuals from Black communities, as well as community and advocacy groups. They told the OHRC about their negative lived experiences with TPS officers, including discriminatory street checks, stops, searches, charges, arrests, and use of force. Their experiences echoed what Black communities have been saying for decades. They detailed stories of harm, conflict and/or fear resulting from anti-Black racism in policing. A full account of these voices can be found in *A Collective Impact* and in Chapter 4 of this report.

Prior reports on anti-Black racism, including reports commissioned by the TPS and TPSB

Decades of government, quasi-government, independent, and media reports have confirmed the existence of anti-Black racism at the TPS and/or made recommendations to address the issue.[1] These reports are summarized in Appendix 4.

Reports commissioned by the TPS and TPSB confirm that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism in policing services provided by the TPS:

- In a 2010 focus group, Black people described instances of being pulled over by TPS officers because they were Black, and shared negative perceptions of the TPS.[2]
- In a 2013 focus group, Black people described being unfairly targeted and beaten by TPS officers, and TPS officers abusing their authority.[3]

- The 2014 *Report on the Evaluation of the Project Charter* noted that racial profiling and carding were identified by "several internal and community participants," and were "perceived as pervasively and negatively influencing the Service's relationships with Black and other racialized communities." Internal and external participants "favourably discussed [then]-Police Chief Blair's 2009 acknowledgement of racial profiling in the Service," but noted that racial profiling "was insufficiently addressed by the Project Charter and raised questions regarding its usefulness in combatting this issue."[4]
- The 2014 *Community-Based Assessment of Police Practices Contact Carding in 31 Division – Final Report* (CAPP Report) found that people who live in 31 Division, including Black and White people, overwhelmingly believed that Toronto police officers engage in racial profiling.[5]
- The 2014–2015 *Intercultural Development Inventory Assessment Project* found that officers did not have sufficient intercultural competence. It also revealed a lack of trust between diverse communities and the TPS, and mistrust in the TPS about diversity initiatives and racial profiling.[6]
- The 2017 *Understanding the Impact of Police Stops* report highlighted research indicating that police stops and searches disproportionately targeted Black people and that Black people were disproportionately arrested.[7]
- *The Way Forward*, the 2017 final report of the Transformational Task Force, found that in public consultations, "concerns were expressed about individual and systemic bias, racism, discrimination, inappropriate use of force and escalation."[8]
- The 2018 TPS *Organizational Culture Assessment* stated that 44% of community members from an online survey and town halls disagreed with the statement that "Members of the Toronto Police Service make ethical and bias-free decisions."[9]
- The 2019 *Perceptions of the Toronto Police and Impact of Rule Changes Under Regulation 58/16* report found that most Black people surveyed did not agree that the TPS treated them fairly and did not agree that TPS officers were honest. Further, 50% of people surveyed (across all racial groups) believed that TPS officers were not impartial but instead favoured members of particular ethnic groups.[10]
- In 2021, in *Missing and Missed, the Report of the Independent Civilian Review into Missing Person Investigations*, the Honourable Gloria Epstein found that systemic discrimination contributed to deficiencies in many of the missing person investigations that she examined, and she noted that much work needed to be done to address systemic discrimination "head on."[11]
  - Justice Epstein noted that Black people have "personally experienced or are well aware of systemic racism in policing" and there is "demonstrated distrust of the police" among Black communities. "The Service has a long history of troubled relationships with the city's Black communities."[12]

These reports have confirmed the adverse experiences of Black people in their interactions with Toronto police over many years, and echo repeated calls for change.

OHRC's data analysis

During the Inquiry, the OHRC retained Dr. Scot Wortley to analyze data from various sources on police interactions with the public.

The Inquiry's two previous reports, *A Collective Impact*[13] and *A Disparate Impact*,[14] detailed the findings in his expert analysis. Dr. Wortley and his team found that Black people were significantly overrepresented in all areas of policing interactions with the public, including but not limited to:

- arbitrary street checks and stops
- arrests and charges, and
- use of force, including deadly force.[15]

Since *A Disparate Impact* was released, Dr. Wortley and his team have prepared two more reports that are included in this final report:

- *Racial profiling and the Toronto Police Service: Evidence, consequences, and policy options* (SQS Report) provided an analysis of data and research on stop, question, and search practices.
- *Additional Benchmarking of TPS Use of Force and Charge Data* (Addendum Report) is an addendum to a Use of Force report featured in *A Disparate Impact*.

The SQS Report

The aim of the SQS Report was to review empirical research on anti-Black racial profiling by the TPS – specifically in stop, question, and search practices.

It reviewed various definitions of racial profiling, including the concept of "carding," followed by a theoretical discussion of the possible causes of racially biased policing.

The report reviewed documentation of racial profiling involving the TPS over the past 25 years, noting that "TPS stop, question and search practices … have had a hugely disproportionate impact on Toronto's Black community."[16]

The report examined street checks in detail, documented the impact of racially disproportionate policing, and looked at policy implications. The full report can be found at Appendix 2. Dr. Wortley's findings are summarized below.

Understanding street checks

Community members tend to use the terms "street checks" or "carding"[17] to describe being stopped, questioned, and searched by the police.[18]

Before January 1, 2017, street checks were unregulated and were:

> Originally intended as an investigative tool to capture the information of people who police had reason to suspect of being involved in criminal activity. Over time, however, it grew into a much less focused practice. Some police services began collecting and storing personal identifying information of many citizens without any belief that they were involved in criminal activity, and without much evidence that such databases were particularly useful in solving crime.[19]

As of January 1, 2017, Ontario Regulation 58/16: *Collection of Identifying Information in Certain Circumstances – Prohibitions and Duties* under the *Police Services Act* (O. Reg. 58/16) came into full effect. TPS 04-14 Regulated Interactions Procedure was revised to reflect the new terminology, and stated that a regulated interaction means an:

> Attempt by a police officer to collect identifying information by asking an individual, in a face-to-face encounter, to identify himself or herself or to provide information for the purpose of identifying the individual, and includes such an attempt whether or not identifying information is collected
>
> > i. only if that attempt is done for the purpose of,
> > > a. inquiring into offences that have been or might be committed; and/or
> > > b. inquiring into suspicious activities to detect offences; and/or
> > > c. gathering information for intelligence purposes;
> > ii. but does not include an attempted collection made by a police officer for the purpose of investigating an offence the officer reasonably suspects has been or will be committed;
> > iii. and does not include an attempt by a police officer to collect identifying information from an individual if,
>
> > - the individual is legally required to provide the information to a police officer;
> > - the individual is under arrest or is being detained;
> > - the police officer is engaged in a covert operation;
> > - the police officer is executing a warrant, acting pursuant to a court order or performing related duties; or
> > - the individual from whom the police officer attempts to collect information is employed in the administration of justice or is carrying out duties or providing services that are otherwise relevant to the carrying out of the police officer's duties. [20]

Michael Tulloch, then-Justice of the Court of Appeal for Ontario, defined a street check as when "information is obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation."[21]

He defined carding as "a small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime, nor is there any reason to believe that the individual has information about any crime. This information is then entered into a police database."[22]

Stops and searches: qualitative research and survey data in Toronto

In the SQS Report, Dr. Wortley examined research that explored racial profiling in Toronto. Highlighting studies since 1998, Dr. Wortley noted the observation that "little has changed" with respect to TPS stop-and-search practices since the street-checks regulation was enacted is:

> Reinforced by a number of recent, smaller-scale qualitative studies. These studies, all conducted since 2017 and the imposition of Ontario's Street Check Regulation, focus on Black youth from disadvantaged Toronto communities. All of these studies document negative encounters between Black youth and the TPS, including allegations of racially biased stop and search practices. All document how TPS stop and search activities contribute to community distrust of the police, reduce the likelihood that youth will report crime, and increase reliance on self-help strategies designed to ensure personal safety. (see Haag 2021; Samuels-Wortley 2021; Samuels-Wortley 2020; Nichols 2018). [23]

He found that qualitative research involving both Toronto residents and Toronto police officers has produced findings that "are highly consistent with the argument that the Toronto police engage in racial profiling. The nature of these qualitative results has not changed over the past three decades."[24]

He also discussed the use of survey methods to document the perceptions of racial profiling in Canada. While there are strengths and weaknesses to this method, he noted that "[t]he results of the … Toronto-area surveys are remarkably similar to the results produced by qualitative studies and studies that examine official statistics from the Toronto Police Service."[25]

Police statistics

One strategy for measuring stop-and-search activities is the use of official police statistics. Dr. Wortley examined TPS street-check data from pre-regulated street checks and regulated interactions from 2008 to 2019.[26]

TPS pre-regulation street-check data, 2008–2014

Dr. Wortley found that Black people were significantly overrepresented in the TPS street-check data compared to their representation in Toronto's population. For example:

- Black people made up 25% of street checks between 2008 and 2013, despite representing only 8.08% of Toronto's population.[27]
- Black people made up 26.5% of street checks in 2014, despite representing only 8.9% of Toronto's population.[28]

Between 2008 and 2013, Black Toronto residents were 3.47 times more likely to be subjected to a street check than White residents.[29] For every Black person in the city, the TPS conducted approximately 2.1 stops. For every White person, the street-check rate was significantly less than one stop.[30] Between 2008 and 2013, the TPS conducted street checks on approximately 61% of Toronto's Black population, compared to 23% of the White population.[31]

There was a significant reduction in the number of reported street checks between 2012 and 2014. This reduction corresponded with "increased public concern about racially biased policing and community allegations of racial profiling," the introduction of receipts,[32] and the release of the PACER Report. The PACER Report recommended that, among other things, front-line officers no longer be evaluated on the number of street checks completed. However, significant racial disparities in street checks persisted into 2014.[33]

Race, age and gender

Young Black men, aged 15 to 24, were particularly overrepresented in TPS street-check data. Although they represented only 0.5% of Toronto's population, young Black men accounted for 10.3% of all street checks between 2008 and 2013. Young Black men were 20.6 times more likely to be street-checked than their representation in the general population would predict.[34]

Community-level crime rates

Dr. Wortley found that racial disparities in street checks were not explained by differences in neighbourhood crime rates. Black people were overrepresented in street-check data in patrol zones with high-crime rates and low-crime rates. Black people were "even more highly overrepresented in contact cards collected in low-crime, predominantly White neighbourhoods."[35]

This finding directly contradicts a commonly offered explanation that overrepresentation occurs simply because the police are patrolling high-crime neighbourhoods with large Black populations.

Also, Black people were more likely than people from other racial groups to be street-checked both within the patrol zones they lived in and when they travelled outside of their immediate neighbourhood.[36]

Types of street checks

Street-check data contain categories of reasons for conducting stops. These included: drug-related, biker gang, street gang, vehicle-related, suspicious activity, vulnerable persons check, and general investigation.

Black people were overrepresented in all categories, except for those related to biker gangs and vulnerable persons.[37] The 2014 data also confirms that street checks occurred through both pedestrian and vehicle stops.[38]

Black people were overrepresented in street checks related to "general investigations." Despite making up 8.9% of Toronto's population, in 2014, Black people represented 25.8% of general investigation street checks.[39] These stops were not the result of a specific traffic violation, criminal investigation, or suspect description.

The overrepresentation of Black people in this category is consistent with racial profiling allegations – that "skin colour makes Black people more vulnerable to general police investigations that do not involve an articulable cause or individualized suspicion."[40]

Comparison to other Canadian cities

While Toronto is not the only urban Canadian police service that conducts street checks, Dr. Wortley noted that its street-check rate was notably higher than any other Canadian city, including Halifax, Calgary, Edmonton, Peel Region, Ottawa, and Hamilton.[41]

Toronto also had the greatest racial disparities for Black people in street checks.[42]

TPS post-regulation street-check data, 2015–2019

The TPS placed a moratorium on street checks in January 2015. No street checks were formally recorded in 2015 and 2016.[43] On January 1, 2017, restrictions on street checks came into force through the provincial government's street-check regulation, i.e., O. Reg. 58/16. Under this regulation, the TPS recorded 25 regulated interactions in 2017, two in 2018, and only one in 2019.[44]

However, qualitative and survey research shows that Black people are stopped by the TPS at a rate "far higher than people from other racial groups."[45] The research also shows that Black people are more likely to be searched than White people.

Dr. Wortley pointed to three studies that suggest that despite street-check regulations, alarming racial differences still exist with respect to police stop, question, and search activities.

The Toronto Guns and Youth Violence Project involved "in-depth interviews [from 2018 and 2019] with 492 young people, 16 to 24 years of age, residing in economically disadvantaged, high-crime communities within the City of Toronto." According to the data collected by Dr. Wortley and other researchers as part of that project:[46]

> Black respondents (44.6%) were much more likely to report being stopped by the police in the past year than respondents from other racial backgrounds (28%). Indeed, almost a third of Black respondents (31.9%) indicated that they had been stopped by the police on multiple occasions in the past year, compared to only 16.8% of respondents from other racial backgrounds. Furthermore, 27.9% of Black respondents indicated that they had been physically searched by the police in the past year, compared to only 14.6% of non-Black respondents. These racial differences are statistically significant.

Similar results were produced by a study commissioned by the TPSB. *The Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey*[47] described the results of a 2017 survey of 1,500 people. The survey and report stated that street checks or carding:

> […] refers to police officer stopping and asking you a series of questions e.g. your name, age, height, weight, names of your friends etc. and recording this information on a contact card. The information is subsequently entered into a database for possible use in future criminal investigations.[48]

In this survey, 11.3% of survey respondents reported being street-checked by the TPS, and of this group, "21% indicated that they had been street- checked in 2017 – the year that the new street regulations came into play."

There were also significant racial disparities. Black respondents were 3.5 times more likely to report being street-checked than White respondents, and 19.1% of Black respondents reported being street-checked compared to 5.5% of White respondents. "[A]fter controlling for gender, age, education, income and neighbourhood crime rate, Black respondents were still 2.2 times more likely to be subject to a street check than White people."[49]

In 2019, the Canadian Association of Black Lawyers (CABL), Legal Aid Ontario, and the Lincoln Alexander School of Law commissioned a survey. *Race and Criminal Injustice: An examination of public perceptions of and experiences with the Ontario criminal justice system*[50] described the results of a 2019 Environics survey of 1,450 residents, aged 18 or over, from the Greater Toronto Area (GTA).[51]

Dr. Wortley found that in the two years before the survey was administered (between 2017 and 2019):

- 40.4% of Black respondents reported being stopped by the police at least once, compared to only 24.7% of White and 24.9% of Asian respondents[52]
- 26.2% of Black respondents reported being stopped two or more times, compared to only 11.8% of Asian and 9.8% of White respondents.[53]

Consistent with the TPS street-check data, Black men were particularly overrepresented.[54]

Racial differences persisted when controlling for "other theoretically relevant variables including respondent age, education, income, immigration status, driving frequency, late-night leisure activities, community crime and disorder, violent victimization, illegal drug use, and criminal history."[55] When these variables are taken into account, Black people were:

- 1.9 times more likely to report one or more instances of being stopped by the police
- 2.8 times more likely to report two or more instances of being stopped
- 7.3 times more likely to report three or more instances of being stopped
- 9.0 times more likely to report four or more instances of being stopped
- 6.1 times more likely to be searched by the police during a stop incident.[56]

Dr. Wortley said: "racial differences are much more pronounced among City of Toronto respondents than respondents who live elsewhere in the GTA (i.e., Peel, Durham, York, and Halton regions)." Black Toronto residents were also "particularly vulnerable to multiple police stops."[57]

For example, 32.8% of Black Toronto residents reported that they have been stopped by the police on multiple occasions in the two years before the survey was administered (between 2017 and 2019), compared to only 18.7% of Black respondents who live in other areas of the GTA. This is consistent with official TPS street-check data, described earlier, which shows that the TPS "historical street check rate is much higher than other Canadian police services."[58]

Dr. Wortley notes that the findings are particularly important given O. Reg. 58/16:

> Thus, although the Ontario Street Check Regulation may have eliminated the formal documentation of street checks, it has not decreased racial disparities in police stop and question activities. Eliminating the street check paper trail has not eliminated all evidence of racial profiling. This finding also supports the argument that the police should be mandated to collect information on all police stops – not just those that result in a formal street check.[59]

He concludes that qualitative research, involving both Toronto residents and Toronto police officers, has produced findings that are highly consistent with the argument that the Toronto police engage in racial profiling.

Correlation of racial disparities in TPS street checks, stops and searches with use of force, charges and arrests

Racial disparities in TPS street checks and qualitative research and survey data on stops and searches correspond with the racial disparities in use of force, charges and arrests reported in *A Collective Impact* and *A Disparate Impact.*

Dr. Wortley stated:

> It is also likely that racial profiling and biased police surveillance practices directly contribute to the gross overrepresentation of Black people in TPS use of force incidents. The greater the overall exposure to police contact, the greater the likelihood that some police encounters will deteriorate into use of force. Furthermore, the results of the OHRC's investigation reveal that, compared to incidents involving White people, use of force incidents involving Black people are more likely to result from proactive policing (i.e., police stops) than calls for service. [60]

Additional Benchmarking of TPS Use of Force and Charge Data (Addendum Report)

Findings from the *Additional Benchmarking of TPS Use of Force and Charge Data* (Addendum Report) incorporate data that were not available during the preparation of *A Disparate Impact*. Dr. Wortley and Dr. Ayobami Laniyonu supplement their previous work through additional analysis of use-of-force incidents, out-of-sight traffic charges, and failure-to-comply charges.

Use of force

In *A Disparate Impact*, Drs. Wortley and Laniyonu compared Black peoples' representation in use-of-force cases against their presence in the general population, and found that they were grossly overrepresented. This is also known as census benchmarking or general population benchmarking.

While Drs. Wortley and Laniyonu strongly agreed with the reasoning underlying the use of census benchmarking, there are those who argue such a tool will not completely explain racial disparities. Some examples of this position include:

- "Racial groups with high levels of contact with the police are at greater risk of experiencing police violence than those with lower levels of contact."
- "Those who have broken the law – and targeted for arrest – are at especially high risk of police use of force."
- "Violent offenders (i.e., those involved in arrests for violent crime) are more likely to demonstrate 'resistance' to the police and are thus particularly vulnerable to police use of force incidents." [61]

To address these arguments, Drs. Wortley and Laniyonu supplemented the analysis of race-based data on use of force by using race-based arrest and street-check data as additional benchmarks in this Addendum Report.

When benchmarking use-of-force incidents against street checks between 2008 and 2013, the results indicate that Black people remain overrepresented in TPS use-of-force statistics.[62]

Using street checks as a benchmark, Black people are in fact significantly overrepresented in lower-level use-of-force incidents, SIU shooting investigations, and TPS use-of-force incidents that resulted in civilian death. Black people are still grossly overrepresented in TPS shooting deaths.

Drs Wortley and Laniyonu explain overrepresentation in their report:

> As discussed in our earlier report, there is no set standard for determining when racial disproportionality (i.e., the over- or under-representation of a particular racial group with respect to a specific social outcome) is cause for concern. However, for the purposes of this study, we have used a relatively high threshold of 50%. In other words, for the purposes of the present analysis, an Odds Ratio of 1.50 or higher will be used to determine whether the over-representation of Black people in TPS use of force cases is noteworthy or not. At times we will discuss the notion of "gross" racial disparity. For the purposes of this report, a gross racial disparity exists when the level of over-representation is 200% or greater (i.e., as indicated by an odds ratio of 3.00 or higher)…

> Odds ratios were calculated by dividing the percentage of all use of force cases involving Black people by their percent representation within each benchmark. An odds ratio approaching 1.00 indicates that Black people are neither overrepresented nor under-represented in use of force cases. An odds ratio less than 1.00 indicates that Black people are underrepresented in use of force incidents. An OR greater than 1.00 indicates that Black people are overrepresented in use of force cases. For example, an OR of 2.00 would indicate that Black people are twice as involved in TPS use of force cases as they are in the population benchmark under consideration. By contrast, an odds ratio of 0.50 would indicates that Black people are 50% less represented in use of force cases than their proportion of the benchmark population would predict.

Street-check benchmarks did produce lower odds ratios than general-population benchmarks.

> This finding suggests that higher rates of police contact may help explain the overrepresentation of Black people in TPS use of force statistics. These results are also consistent with other report findings which suggest that, compared to cases involving White people, use of force incidents involving Black people are more likely to involve proactive policing practices (i.e., traffic stops). Overall, these findings are consistent with the argument that racial profiling contributes to the overrepresentation of Black people in use of force incidents by increasing the number of negative, involuntary contacts between the police and Black residents. The higher the number of negative, involuntary contacts, the greater the likelihood that some cases will devolve into an incident involving police use of force. [63]

Using the arrest benchmark, Black people were still significantly overrepresented in lower-level use-of-force incidents, TPS use-of-force incidents that resulted in civilian death, and TPS shooting deaths. Black people were also overrepresented in TPS shootings and SIU use-of-force investigations, but below the 1.5 noteworthy threshold[64] for a disproportionality.[65] The results are very similar using the TPS arrests for property crime benchmark as they are for the total arrest benchmark.[66]

Using TPS arrests for violent crime as a benchmark, Black people remain significantly overrepresented in use-of-force incidents that resulted in civilian death and TPS shooting deaths. Black people were also overrepresented in lower-level use-of-force incidents and SIU shooting investigations, but below the 1.5 noteworthy threshold for a disproportionality.[67]

Using TPS arrests for "serious" violent crime[68] as a benchmark, Black people remain significantly overrepresented in TPS fatal shootings. However, when using firearms-related arrests as a benchmark, Black people were overrepresented in TPS fatal shootings, but below the 1.5 noteworthy threshold for a disproportionality. Black people were also underrepresented in lower-level use-of-force incidents and SIU use-of-force investigations. However, due to very small numbers,[69] the use of "serious violence" to benchmark use-of-force incidents may be statistically problematic."[70]

It is important to note that the analysis presented shows that using street-check and arrest benchmarking practices reduces – but does not eliminate – the overrepresentation of Black people in TPS use-of-force incidents.

> In other words, even when we consider the proportion of arrests that involve Black suspects, Black people remain significantly overrepresented in TPS use of force incidents -- including police shootings and shooting deaths. These findings, in our opinion, provide further evidence that racial bias contributes to racial disparities in TPS use of force.[71]

According to Drs. Wortley and Laniyonu, some may interpret the findings that "the more serious the arrest category – the less significant the overrepresentation of Black people" as "'evidence' that it is 'serious criminal behaviour,' not race, that explains why Black people are more likely to be involved in TPS use of force incidents[.]"[72]

However, such an interpretation "should only be considered with great caution. Indeed, aggregate-level associations between arrest statistics and use of force statistics diverge significantly from the information provided in individual case files."[73] For example:

- The fact that Black people are overrepresented in TPS arrest statistics may be misinterpreted as evidence that the Black individuals involved in police use of force incidents have lengthy criminal records involving violent offences and are thus "known to be dangerous" during police encounters. However, between 2013 and 2017, 55.6% of the Black people involved in SIU use of force investigations had no previous criminal record.[74]
- The fact that Black people are overrepresented in firearms arrests may give the impression that the Black individuals involved in TPS use of force cases were often usually armed with a gun at the time of the incident. This is not the case. The data indicate that, between 2013 and 2017, two-thirds of the Black individuals involved in SIU investigations were unarmed during the use of force incident. Only 8.3% were in possession of a firearm.
- [In addition,] very few of the TPS use of force cases analyzed (lower-level and SIU cases) involved an attempt to arrest a suspect for a serious violent offence like homicide, attempted homicide, aggravated assault, or firearms possession.[75]

The potential explanation for why Black people were overrepresented in TPS arrests for violent crime while most Black people involved in use-of- force incidents were unarmed and did not have a criminal record is that officers stereotype Black people "as potentially dangerous."[76] This explanation is supported by the TPS's analysis of its 2020 use-of-force data (see below), which found that this:

> … overrepresentation cannot be explained by other factors including age, gender, nature of police contact, arrest statistics, or the presence of weapons. For example, consistent with the racialized fear or stereotype argument, the TPS analysis reveals that, in 2020, TPS officers were 2.3 times more likely to point a firearm at an unarmed Black person than an unarmed White person.[77]

Finally, in the Addendum Report, Drs. Wortley and Laniyonu supplemented the multivariate analysis of use of force in *A Disparate Impact* by benchmarking using race-based arrests and street-check data. They noted that "benchmarking on street checks and arrests should be considered conservative estimates of racial disparities."[78] Overall, the results of the multivariate analysis using these additional benchmarking techniques are consistent with the results presented in *A Disparate Impact* "with some important caveats:"[79]

> We find that Black Torontonians are still far more likely to experience force relative to White Torontonians, and that other racialized minorities are less likely to experience force than White Torontonians, even when race-specific rates of contact with the police and race-specific arrests are set as benchmarks. The relative risk that Black Torontonians will experience force estimated in these models, however, is smaller than the relative risk estimated in the main report (*A Disparate Impact*). Also, we do not estimate a statistically significant difference between risk of force between Black and White Torontonians when arrests for violent crimes are set as the population at risk for force.

Drs. Wortley and Laniyonu concluded that:

> Despite controlling for violent crime and other patrol zone factors, however, our overall finding is that racial disparities persist and remain troubling. That is, they point to the unjustified and disparate involvement of Black Torontonians in force incidents that can erode mental and physical wellbeing, police legitimacy, success in school for children, and trust in government.[80]

Out-of-sight driving offences

Out-of-sight driving offences are those that cannot be observed by an officer, and are only identified once a traffic stop has been initiated. They can include driving without a licence, driving while suspended, driving without insurance, and driving without proper vehicle registration.

Using estimates of Toronto's driving population as an additional benchmark, Drs. Wortley and Laniyonu found that the overrepresentation of Black people in out-of-sight driving offences increased when compared to using the general population of Toronto as a benchmark.

Drs. Wortley and Laniyonu drew upon data from the 2016 Canadian census that captured the "number of Toronto residents who drove to work using a car, truck, or other personal motor vehicle." According to Dr. Wortley, "commute to work estimates may be considered superior to population benchmarks because they better capture the driving population (i.e., those who are of the legal driving age and have access to a motor vehicle)" but they are "not without their limitations" (e.g., they don't capture people who use a car frequently for leisure purposes or to go to school).[81]

Drs. Wortley and Laniyonu concluded that "Black people remain grossly overrepresented in TPS out-of-sight traffic charges."[82]

In fact, the overrepresentation of Black people – particularly Black women – increases when we use the driving benchmark as opposed to the general population benchmark. These findings are consistent with both police statistics and survey data that suggest that Black people are much more likely to be stopped and questioned by TPS officers than people from other racial backgrounds. Together, these findings strongly support the argument that the TPS has engaged in racial profiling. [83]

Using the general population benchmark, Black people were 4.0 times more likely to be involved in an out-of-sight driving offence than their presence in the general population would predict. However, using the driving population benchmark, Black people were 5.1 times more likely to be involved in an out-of-sight driving offence than their presence in the driving population would predict.[84]

Failure to comply

Failure to comply is a criminal offence that one can be charged with if they do not follow a court order or a police undertaking, such as conditions imposed when a person is on probation or terms of release when a person has been charged with an offence.

Using arrest statistics as a benchmark, Dr. Wortley found that Black people were 1.3 times more likely to be charged with failure-to-comply charges than their representation in arrest statistics, which is less than the 1.5 times threshold established by Dr. Wortley for a noteworthy disproportionality. Using the arrest benchmark significantly reduced the overrepresentation of Black people in failure-to-comply charges.

However, according to Dr. Wortley, this reduction in Black overrepresentation "does not eliminate evidence of the possibility of racial bias."[85] One must look at the many steps involved in the application and enforcement of release conditions that could affect the representation of Black people in failure-to-comply charges.[86]

TPS and TPSB's reports and statistical analyses

Multiple surveys, reports, and studies commissioned by the TPS and TPSB themselves have confirmed that Black people are subjected to systemic racial discrimination, racial profiling, and anti-Black racism in policing services provided by the TPS.[87]

Recently, as part of its Race & Identity Based Data Collection Strategy, the TPS commendably analyzed race-based data from 2020 on use-of-force incidents that involved the completion of provincial use-of-force reports, and strip searches.

This data confirms the OHRC's finding of anti-Black racism in policing in Toronto.[88] In particular, it confirms that in 2020, Black people were disproportionately the subject of:

- enforcement actions
- strip searches
- use of force.

Enforcement actions

The TPS used "enforcement actions" as a benchmark to determine whether there were racial disparities in its engagement with the community. They were considered a measure of police contact and were defined as:

All incident reports of arrests resulting in charges (including released at scene) or released without charges, *Provincial Offences Act* Part III tickets (serious offences), summons, cautions, diversions, apprehensions, and those with the role type of "subject" or "suspect." It excludes police interactions related to victims, complainants, witnesses, traffic or pedestrian stops, lower levels of tickets, and parking enforcement.[89]

The TPS's data demonstrates that TPS enforcement actions disproportionately impacted members of Black communities.

Although only 10.2% of the Toronto population in 2020:

- Black people comprised 22.6% of the people involved in "enforcement actions"; and
- Black people were 2.2 times overrepresented in "enforcement actions" compared to their presence in Toronto in 2020.[90]

Strip searches

The TPS's data also revealed that Black people were disproportionately impacted by strip searches.

Although only 10.2% of Toronto's population in 2020:

- Black people comprised 31% (2,223) of all police strip searches;[91] and
- Black people were overrepresented in strip searches even when benchmarking based on arrests. On that analysis, Black people were 1.1 times overrepresented.[92]

Use of force

Although only 10.2% of Toronto's population in 2020:

- Black people comprised 39% of people involved in use of force incidents (482 people);[93]
- Black people remain overrepresented in use of force incidents even when benchmarking based on "enforcement actions" rather than population statistics in the census;[94]
- Black people and Black youth (under the age of 17) were 1.6 and 1.5 times overrepresented in use of force incidents respectively compared to their presence in enforcement action;[95] and
- Black people were also 2.3 times more likely than White people to have firearms pointed at them by an officer where no civilian weapons were perceived by the officer.[96]

Voices of TPS officers

During the Inquiry, the OHRC interviewed 12 officers, seven of whom were members of the Black Internal Support Network (BISN), an employee group within the TPS. Our goal was to learn about police culture, training, policies, procedures, and accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities.

The officers gave personal and poignant examples of their experiences with anti-Black racism and racial discrimination within the TPS. They discussed how the TPS culture perpetuates racism and discrimination. Furthermore, the culture resists any actions or attempts at change, including education, training, and increased diversity of service at the member and leadership levels.

The officers also gave first-hand accounts of the anti-Black racism and discrimination they observed in the provision of services to the public. The OHRC appreciates the courage of these officers in coming forward and speaking so candidly with us. Their experiences further confirm the existence of anti-Black racism in the TPS. A summary of these interviews is contained in Chapter 4.

The Courts

The Supreme Court of Canada, the Ontario Court of Appeal, and the Ontario Superior Court of Justice have all acknowledged the existence of anti-Black racism in the criminal justice system, including within the TPS.[97] Multiple trial courts and human rights tribunals have found instances of racial discrimination and/or profiling by the TPS.[98]

The OHRC identified eight HRTO and court decisions decided between 2009 and 2017 that found that Black people were the victims of racial profiling or racial discrimination by TPS officers.[99]

TPS acknowledgement of anti-Black racism

The existence of anti-Black racism was denied for many years by the TPS and other police services in Ontario and across Canada.

However, the overwhelming evidence of racial discrimination and profiling, and the prolonged and resilient voices of Black communities in Toronto, have resulted in the TPS, the TPSB and City officials, among others, to acknowledge the reality of anti-Black racism in policing.

In 2009, then-Toronto Police Chief William Blair acknowledged the possibility of racial profiling within the TPS.[100]

In 2017, then-Mayor John Tory acknowledged that "[a]nti-Black racism exists in Toronto" and eliminating it must be the city's goal.[101] Accordingly, Toronto City Council adopted the Toronto Action Plan to Confront Anti-Black Racism.[102] The plan recognized that "Black Torontonians face many disparities related to law enforcement" and are "disproportionately affected by racial profiling and over-policing."[103]

In December 2018, after the release of *A Collective Impact,* then-Chief Mark Saunders acknowledged that racial profiling and racism exist within the TPS.[104]

In June 2020, Chief Saunders acknowledged that anti-Black racism is a "reality", and the criticism has been "more than fair."[105]

Also in June 2020, the Ontario Association of Chiefs of Police (OACP) acknowledged the existence of systemic racism in policing, which they recognized represented "a serious threat to the ability of Ontario's police professionals to deliver effective, fair, and accountable policing services to the people of Ontario."[106]

In July 2020, following Chief Saunders' resignation, Mayor Tory stated that, "sensitivity to anti-Black and anti-Indigenous racism and a commitment to ushering in a 'change in policing' [were] prerequisites" in choosing the next Chief of Police.[107]

In August 2020, then-Interim Chief James Ramer stated that one of his priorities would be to identify and eliminate systemic anti-Black racism in the TPS.[108]

Also in August 2020, the TPSB acknowledged that "systemic racism occurs within policing," it "must do better" and the "status quo is not adequate."[109]

In November 2020, the Canadian Association of Chiefs of Police (CAPA) stated:

> We have study after study, including government-commissioned reports, that demonstrate we have an issue with systemic racism throughout our justice system, which includes our legal system, our courts and our police services.[119]

On June 15, 2022, then-Interim Chief Ramer stated that the results of the TPS analysis of 2020 data on enforcement actions, strip searches, and use of force confirmed what Black communities had been telling the TPS for years: that the TPS continues to disproportionately over-police Black communities, among others. Based on the TPS data, he apologized for systemic racism within the TPS:

> [Black and Indigenous communities] are disproportionately over-policed. This data demonstrates the unfortunate realities of those experiences. As an organization, we have not done enough to ensure that every person in our city receives fair and unbiased policing. For this, as Chief of Police and on behalf of the Service, I am sorry and I apologize unreservedly…

> With the release of the initial results of this report and ongoing work, I recognize that today will be a difficult day for many within the Service and within the communities we serve.

It is difficult for the Toronto Police Service because our own analysis of our data from 2020 discloses that there is systemic discrimination in our policing in these areas. That is that there is a disproportionate impact experienced by racialized people and, particularly those from Black communities when there is a use-of-force interaction with the Toronto Police Service. [111]

These acknowledgements by the TPS, TPSB, and City officials form an important first step. Acknowledgement of the findings of this Inquiry would be an important next step.

As stated in 2020 by Ena Chadha, then-OHRC Chief Commissioner, after the release of *A Disparate Impact*:

The time for debate about whether systemic racism or anti-Black racism exists is over. It is time to come together to change law enforcement institutions and systems that produce such disproportionate outcomes – community trust and safety, especially the safety of Black lives, depend on it.[112]

Accordingly, the question is, "What can be done about it?" The answers and the OHRC's recommendations are found in the following chapters.

Chapter 3 Endnotes

1] For example, see: Claire Lewis et al, *The Report of the Race Relations and Policing Task Force* (Toronto: Government of Ontario, 1988), online (pdf): https://www.siu.on.ca/pdfs/b-cover_page_letter_preface.pdf; Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario* (Toronto: Government of Ontario, 1992), online (pdf): https://www.siu.on.ca/pdfs/report_of_the_advisor_on_race_relations_to_the_premier_of_ontario_bob_rae.pdf; Margaret Gitten et al, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995), online (pdf): https://collections.ola.org/mon/25005/185733.pdf; Jim Rankin et al, "Singled out" series, *Toronto Star* (19 October 2002), online: https://www.thestar.com/news/gta/known-to-police/singled-out/article_abe5f144-b412-5692-8290-683a291a2a37.html; OHRC, *Paying The Price: The Human Cost of Racial Profiling* (Toronto: OHRC, 2003), online (pdf): https://www3.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf?_gl=1*1jcuhdi*_ga*MTkwOTEwMjQ1NC4xNjkwNTYxOTk2*_ga_K3JBNZ5N4P*MTY5MDkwNjQzNy4xNi4wLjE2OTA5MDY0MzcuMC4wLjA; OHRC, *Policy and guidelines on racism and racial discrimination* (Toronto: OHRC, 2005), online (pdf): https://www3.ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf; The 2007 OHRC *Ontario Human Rights Charter*; Hon. Roy McMurtry and Alvin Curling, *The Review of the Roots of Youth Violence* (Toronto: Queen's Printer for Ontario, 2008), online (pdf): https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn30240-vol1-eng.pdf; OHRC*, Human rights and policing: Creating and sustaining organizational change* (Toronto: OHRC, 2011), online (pdf): https://www3.ohrc.on.ca/sites/default/files/attachments/Human_rights_and_policing%3A_Creating_and_sustaining_organizational_change.pdf; "Known to Police" Series, *Toronto Star* (2012—2013), online: https://www.thestar.com/news/gta/known-to-police/; The 2013 Mukherjee *Report on Police Carding and Issue of Profiling*; Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014), online (pdf): https://www.torontomu.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf; Logical Outcomes, *"This issue has been with us for ages": A community-based assessment of police contact carding in 31 Division – final report* (Toronto: Logical Outcomes, 2014), online (pdf): https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn000043559042-eng.pdf; The 2015 OHRC Report *Under Suspicion: Research and consultation report on racial profiling in Ontario*; The 2016 United Nations *Working Group of Experts on People of African Descent*; OHRC, *Under Suspicion: Research and consultation report on racial profiling in Ontario* (Toronto: OHRC, 2017), online (pdf): https://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf?_gl=1*1xq9phq*_ga*MTkwOTEwMjQ1NC4xNjkwNTYxOTk2*_ga_K3JBNZ5N4P*MTY5MDkwNjQzNy4xNi4xLjE2OTA5MDg1NDcuMC4wLjA; OHRC, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (Toronto: OHRC, 2018), online (pdf): https://www.ohrc.on.ca/sites/default/files/TPS%20Inquiry_Interim%20Report%20EN%20FINAL%20DESIGNED%20for%20remed_3_0.pdf?_gl=1*1ahj0je*_ga*MTkwOTEwMjQ1NC4xNjkwNTYxOTk2*_ga_K3JBNZ5N4P*MTY5MDkwNjQzNy4xNi4xLjE2OTA5MDg3MzQuMC4wLjA.&_ga=2.137198521.801170755.1909102454.1690561996#overlay-context=en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results; OHRC, *A Disparate Impact:*

Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (Toronto: OHRC, 2020), online (pdf): https://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20-%20TPS%20inquiry%20%28updated%20January%202023%29.pdf; Hon. Gloria J Epstein et al, *Missing and Missed*, *Report of the Independent Civilian Review into Missing Person Investigations* (Toronto: TPSB, 2021), online: https://www.tps.ca/chief/chiefs-office/missing-and-missed-implementation/report-independent-civilian-review-missing-person-investigations/.

2] Market Dimensions, "Toronto Police Community Evaluation" (2010) at 10, 11 and 21.

3 Your Voice Canadian Market Research Company Inc., Report on Focus Groups held for the Toronto Police Service (December 2013).

4 Diversity Institute – Ryerson University, "Evaluation of the Human Rights Project Charter" (February 2014) at 53, online (pdf): www.ryerson.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

5 Logical Outcomes, "The issue has been with us for ages: A community-based assessment of police contact carding in 31 Division – Final Report" (2014).

6 Mitchell Hammer, Hamlin Grange and Michael Paige, "IDI Assessment Project on Building Intercultural Competence with the Toronto Police Service" (2015) – Executive Summary and Final Report.

7 Anthony N. Doob and Rosemary Gartner, *Understanding the Impact of Police Stops, A report prepared for the Toronto Police Services Board* (17 January 2017), online (pdf): https://www.crimsl.utoronto.ca/sites/crimsl.utoronto.ca/files/DoobGartnerPoliceStopsReport-17Jan2017r.pdf.

8 TPS and TPSB, *The Action Plan: The Way Forward – Modernizing Community Safety in Toronto* (2017) at 19, online (pdf): https://www.tps.ca/media/filer_public/5f/5d/5f5d80b1-16d1-46d8-a116-74bc3acc2c71/executive-summary-mobile.pdf#:~:text=With%20this%20action%20plan%2C%20we,all%20Toronto%20residents%20and%20communities.

9 MNP, "Organizational Culture Assessment of the TPS" (2018) at 41.

10 Dr. Gervan Fearon and Dr. Carlyle Farrell, Perceptions of the Toronto Police and Impact of Rule Changes Under Regulation 58/16: A Community Survey (May 2019).

11 The Honourable Gloria J. Epstein, Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations (Toronto: TPSB, 2021) vol 3 at 720.

12 The Honourable Gloria J. Epstein, Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations (Toronto: TPSB, 2021) vol 3 at 606–611.

13] OHRC, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (Toronto: OHRC, 2018), Appendix E at 94, online: *OHRC* www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

14] OHRC, A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (Toronto: OHRC, 2020), at 109–110, online: OHRC www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

15] OHRC, A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (Toronto: OHRC: 2018), Appendix E at 94, online: www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black; OHRC, A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (2020), at 109–110, online: www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black;.Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) – see Appendix 2

16 Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 4, see Appendix 2.

17] "Carding" is a shortened term for "contact card collection" or "contact card stops," undertaken by the police when stopping an individual.

18] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 55, see Appendix 2.

19] The Honourable Michael H Tulloch, *Independent Street Checks Review* (Ontario: King's Printer, 2018) online: https://www.ontario.ca/page/report-independent-street-checks-review.

20] https://www.tpsb.ca/policies-by-laws/board-policies/178-regulated-inter…

21] The Honourable Michael H Tulloch, *Independent Street Checks Review* (Ontario: King's Printer, 2018) online: https://www.ontario.ca/page/report-independent-street-checks-review.

22] The Honourable Michael H Tulloch, *Independent Street Checks Review* (Ontario: King's Printer, 2018) online: https://www.ontario.ca/page/report-independent-street-checks-review.

23] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 21, see Appendix 2.

24] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 22, see Appendix 2.

25] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 35, see Appendix 2.

26] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021), see Appendix 2.

27] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 37, see Appendix 2.

28] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 43, see Appendix 2.

29] Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 38, see Appendix 2.

30] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 37, see Appendix 2.

31] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 39, see Appendix 2.

32] Requiring TPS officers to provide a receipt to all civilians involved in street-check incidents.

33] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 42–43, see Appendix 2.

34] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 40, see Appendix 2.

35] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 41, see Appendix 2.

36] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 41, see Appendix 2.

37] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 45, see Appendix 2.

38] See also Jim Rankin et al, "As criticism piles up, so do the police cards," *Toronto Star* (27 September 2013), online: www.thestar.com/news/gta/knowntopolice2013/2013/09/27/as_criticism_piles_up_so_do_the_police_cards.html.

39] Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 45, see Appendix 2. Black people were also overrepresented in "general investigation" street checks in 2008. Twenty-four per cent of these street checks involved Black people – Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 42, see Appendix 2; The Toronto Anti-Violence Intervention Strategy (TAVIS) unit had the highest Black carding rate of any policing unit. Eighty-three per cent of TAVIS cards were for general investigation and 40% were of Black people – *Toronto Star* Analysis Package (7 August 2013) at 15–17.

40] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 42, see Appendix 2.

41] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 49–50, see Appendix 2.

42] While Black people were overrepresented in street-check data from all Ontario police services, with the exception of the OPP in 2008 to 2013, the street-check rate for Black people in Toronto was approximately five times greater than the rate for any other Ontario jurisdiction. This includes jurisdictions with a similar proportion of Black people that make up the population, like Peel, where 9.5% of the population is Black, and Ottawa, where 6.6% of the population is Black. Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 52, see Appendix 2; Statistics Canada, *Census Profile, 2016 Census, Peel, RM [Census division], Ontario and Ontario [Province]* (table), Statistics Canada Catalogue no. 98-316-X2016001. Ottawa: Statistics Canada, (2017) online: www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E.

43] Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 55; see also Patty Winsa & Jim Rankin, "Toronto Police chief Bill Blair suspends controversial practice of carding," *Toronto Star* (6 January 2015), online:www.thestar.com/news/crime/2015/01/06/toronto_police_chief_bill_blair_suspends_controversial_practice_of_carding.html.

44] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 55, see Appendix 2.

45] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 62, see Appendix 2.

46] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 56–57, see Appendix 2.

47] Gervan Fearon and Carlyle Farrell, Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey (2017).

48] Gervan Fearon and Carlyle Farrell, Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey (Toronto Police Services Board, 2017) at 53 and 96.

49] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 57, see Appendix 2.

50] Canadian Association of Black Lawyers, "Race and Criminal Justice: New report from CABL, Ryerson's Faculty of Law and the University of Toronto confirms significant racial differences in perceptions and experiences with the Ontario criminal justice system" (10 February 2021), online: cabl.ca/race-and-criminal-injustice-new-report-from-cabl-ryersons-faculty-of-law-and-the-university-of-toronto-confirms-significant-racial-differences-in-perceptions-and-experiences-with-the-ontari/.

51] Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 58, "Quotas were set to ensure that the final sample consisted of at least 450 respondents from each of three racial groups: 450 of the respondents identified as Black, 450 as Asian (including people of Chinese, Korean, Japanese backgrounds) and 550 as White/Caucasian." See Appendix 2.

52] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 59, see Appendix 2.

53] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 59, see Appendix 2.

54] Half of Black male respondents (49.2%) reported they had been stopped by police in the past two years, compared to 25.5% of White males and 29.8% of Asian males. Black women also reported more police stops than White or Asian women – see: Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* (OHRC, September 2021) at 59, see Appendix 2.

55] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 60, see Appendix 2.

56] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 60, see Appendix 2.

57] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 28, see Appendix 2.

58] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 61, see Appendix 2.

59] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 62, see Appendix 2.

60] Scot Wortley, Racial profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 71, see Appendix 2.

61] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 4. See Appendix 3.

62] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 6. See Appendix 3.

63] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 7. See Appendix 3.

64] For the purposes of this study, Dr. Wortley used a relatively high threshold of 50%. In other words, for the purposes of their analysis, an odds ratio of 1.50 or higher will be used to determine whether the overrepresentation of Black people in TPS use of force cases is noteworthy or not. Dr. Scot Wortley and Dr. Ayobami Laniyonu, *Addendum Report*: *Additional benchmarking of TPS use of force and charge data* (November 2022) at 8. See Appendix 3.

65] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 7. See Appendix 3.

66] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 7. See Appendix 3.

67] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 7. See Appendix 3.

68] i.e., homicide, attempted homicide, aggravated assault, and firearms violations, see Dr. Scot Wortley and Dr. Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 8. See Appendix 3.

69] Between 2014 and 2017, the TPS made only 164 arrests for homicide (41 per year), 281 arrests for attempted homicide (70 per year), 911 arrests for aggravated assault (228 per year), and 2,469 arrests for firearms offences (617 per year). By contrast, during this same period, the TPS conducted 110,218 arrests in total (27,554 per year) and 43,245 arrests for violent crime (10,811 per year). Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 8. See Appendix 3.

70] Scot Wortley and Ayobami Laniyonu*, Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 8. See Appendix 3.

71] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 8. See Appendix 3.

72] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 9. See Appendix 3

73] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 9. See Appendix 3

74] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 9. See Appendix 3.

75] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 9. See Appendix 3.

76] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 9. See Appendix 3.

77] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022)at 9. See Appendix 3.

78] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 14. See Appendix 3.

79] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 14. See Appendix 3.

80] Scot Wortley and Ayobami Laniyonu*, Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 24-25. See Appendix 3.

81] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 23. See Appendix 3.

82] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 23 to 25. See Appendix 3.

83] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 25. See Appendix 3.

84] Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 7. See Appendix 3.

85 Scot Wortley and Ayobami Laniyonu, *Addendum Report: Additional benchmarking of TPS use of force and charge data* (November 2022) at 28. See Appendix 3.

86] Scot Wortley and Ayobami Laniyonu, Addendum Report: Additional benchmarking of TPS use of force and charge data (November 2022) at 30. See Appendix 3.

87] Market Dimensions, "Toronto Police Community Evaluation" (2010); Your Voice Canadian Market Research Company Inc., Report on Focus Groups held for the Toronto Police Service (December 2013); Mitchell Hammer, Hamlin Grange and Michael Paige, "IDI Assessment Project on Building Intercultural Competence with the Toronto Police Service" (2015) – Executive Summary and Final Report; Anthony N. Doob and Rosemary Gartner, *Understanding the Impact of Police Stops, A report prepared for the Toronto Police Services Board* (17 January 2017), online: *University of Toronto* https://www.crimsl.utoronto.ca/sites/crimsl.utoronto.ca/files/DoobGartnerPoliceStopsReport-17Jan2017r.pdf; TPS and TPSB, *The Action Plan: The Way Forward – Modernizing Community Safety in Toronto* (2017) at 19, online (pdf): Toronto Police Service https://www.tps.ca/media/filer_public/5f/5d/5f5d80b1-16d1-46d8-a116-74bc3acc2c71/executive-summary-mobile.pdf; MNP "Organizational Culture Assessment of the TPS" (2018) at 41, online TPSB https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R30_-_Preliminary_report_on_Diversity_in_Human_Resources.pdf; Dr. Gervan Fearon and Dr. Carlyle Farrell, *Perceptions of the Toronto Police and Impact of Rule Changes Under Regulation 58/16: A Community Survey* (May 2019)*.

88] OHRC, A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, online: OHRC:www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

89] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at Appendix C – Glossary of Terms, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

90] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 38 and 45, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

91] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 61-62, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

92] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 76, online: www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

93] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 48, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

94] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 49 and 53, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

95] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 49 and 53, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

96] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 54 and 55, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

97] For example *R. v. Parks*, 1993 CanLII 3383 (ON CA); *R. v. Brown*, 2003 CanLII 52142 (ON CA); *Peart v. Peel Regional Police Services* 2006 CanLII 37566 (ON CA); *R. v. Jackson*, 2018 ONSC 2527; *R. v. Dudhi*, 2019 ONCA 665; *R. v. Le*, 2019 SCC 34; *R. v. Sitladeen*, 2021 ONCA 303; *R. v. Theriault*, 2021 ONCA 517 (CanLII); *R. v. Morris*, 2021 ONCA 680 (CanLII), *R. v. Sitladeen*, 2021 ONCA 303 (CanLII).

98] For example, *Abbott v Toronto Police Services Board*, 2009 HRTO 1909; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; *Shaw v Phipps*, 2012 ONCA 155; *R v Ahmed*, [2009] OJ No 5092 (SCJ); *R v K(A)*, 2014 ONCJ 374; *R v Smith*, 2015 ONSC 3548; *R v Thompson*, [2016] O.J. No. 2118 (Ont CJ); *Elmardy v Toronto Police Services Board*, 2017 ONSC 2074.

99] *Abbott v Toronto Police Services Board*, 2009 HRTO 1909; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; *Shaw v Phipps*, 2012 ONCA 155; *R v Ahmed*, [2009] OJ No 5092 (SCJ); R v K(A), 2014 ONCJ 374; *R v Smith*, 2015 ONSC 3548; *R v Thompson* [2016] O.J. No. 2118 (Ont CJ); *Elmardy v Toronto Police Services Board*, 2017 ONSC 2074.

The incidents that that were the subject of *Abbott v Toronto Police Services Board*, 2009 HRTO 1909; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; *R v Ahmed*, [2009] OJ No 5092 (SCJ); and *Shaw v Phipps*, 2012 ONCA 155 occurred before 2010.

For brief summaries of *R v Thompson*, [2016] O.J. No. 2118 (Ont CJ); *Elmardy v Toronto (City) Police Services Board*, 2017 ONSC 2074; *R v K(A)*, 2014 ONCJ 374 and *R v Smith*, 2015 ONSC 3548.

100] Robyn Doolittle, "Racial bias exists on police force, chief says" (30 September, 2009) online: *The Toronto Star* https://www.thestar.com/news/gta/2009/09/30/racial_bias_exists_on_police_force_chief_says.html.

101] City of Toronto, "Toronto Action Plan to Confront Anti-Black Racism" (2017) at Executive Summary, online (pdf): City of Toronto www.toronto.ca/legdocs/mmis/2017/ex/bgrd/backgroundfile-109127.pdf.

102] City of Toronto, "Toronto Action Plan to Confront Anti-Black Racism" (2017), online (pdf): City of Toronto www.toronto.ca/legdocs/mmis/2017/ex/bgrd/backgroundfile-109127.pdf.

103] City of Toronto, "Toronto Action Plan to Confront Anti-Black Racism" (2017) at Executive Summary, 33–35, online (pdf): City of Toronto www.toronto.ca/legdocs/mmis/2017/ex/bgrd/backgroundfile-109127.pdf.

104] "Toronto police chief acknowledges racial profiling challenges in wake of human rights report," *CBC News* (11 December 2018), online: www.cbc.ca/news/canada/toronto/saunders-ohrc-response-1.4940677.

105] Bryann Aguilar, "Criticism of police in wake of protests 'more than fair,' Toronto police chief says," *CP24* (4 June 2020), online: www.cp24.com/news/criticism-of-police-in-wake-of-protests-more-than-fair-toronto-police-chief-says-1.4969953.

   Further, as indicated in *A Collective Impact*, in 2009, then-Chief Blair acknowledged that racial bias exists within the Toronto Police. Robin Doolittle, "Racial bias exists on police force, chief says," *Toronto Star*, (30 September 2009), online: www.thestar.com/news/gta/2009/09/30/racial_bias_exists_on_police_force_chief_says.html.

106] Ontario Association of Chiefs of Police, statement, "Racism, in any form, is evil" (14 November 2020), online: OACP www.oacp.ca/en/news/statement-racism-in-any-form-is-evil.aspx; Ontario Association of Chiefs of Police, statement, "OHRC's Framework for the Province to Address Systemic Racism in Policing" (29 July 2021), online: OACP www.oacp.ca/en/news/statement-ohrc-s-framework-for-the-province-to-address-systemic-racism-in-policing.aspx.

107] Chris Fox, "Next Toronto police chief must have 'sensitivity to anti-Black racism,' mayor says," *CTV News* (27 June 2020), online: https://toronto.ctvnews.ca/next-toronto-police-chief-must-have-sensitivity-to-anti-black-racism-mayor-says-1.5002615.

108] Kayla Goodfield, "'Trust has been broken': Toronto's interim police chief apologizes to Dafonte Miller, promises transparency," CTV News (6 August 2020), online: https://toronto.ctvnews.ca/trust-has-been-broken-toronto-s-interim-police-chief-apologizes-to-dafonte-miller-promises-transparency-1.5053280.

109] TPSB, "Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety" (August 2020) at 2, online (pdf): TPSB https://tpsb.ca/images/agendas/PUBLIC_AGENDA_Aug_18.pdf.

110] Canada, Parliament, House of Commons, Standing Committee on Public Safety and National Security, 1st sess., 43rd Parliament, Meeting No. 12, 2020, 2, CAPA), https://www.ourcommons.ca/DocumentViewer/en/43-2/SECU/meeting-7/evidence.

111] TPS Media Centre (article by Ron Fanfair), "Race-Based Data Shows Over-Policing" (15 June 2022), online: https://www.tps.ca/media-centre/stories/race-based-data-shows-over-policing/; https://www.youtube.com/watch?v=w80pKL3RdMY.

112] Ena Chadha, "Remarks by Interim Chief Commissioner Ena Chadha at the August 10, 2020, news conference on the release of *A Disparate Impact*: *Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*," OHRC, accessed October 2, 2021, http://www.ohrc.on.ca/en/remarks-ohrc-interim-chief-commissioner-ena-chadha.

Chapter 4 - Consultations with Black communities, community agencies, and police

The OHRC held extensive consultations with a wide range of stakeholders. Members of Black communities and organizations serving Black communities were engaged through interviews, focus groups, and a policy roundtable with police leaders to discuss pressing policing issues and potential reforms. The OHRC also interviewed TPS and TPSB leadership, and conducted a survey of TPS officers.

This chapter provides a high-level summary of the results from these consultations, which also informed this final report and the recommendations.

Consultations with Black communities

The OHRC met with individuals and representatives from local organizations that reflect the range of lived experiences and intersectional identities that exist within Black communities. Many of the issues identified in *A Collective Impact* were discussed again and remain unresolved. For example, we continued to hear serious concerns about systemic racism, police brutality, overcharging, arbitrary stops, and other modes of abusive policing. These consultations further revealed the impact of disproportionate and discriminatory policing.

During consultations, we canvassed a range of possible solutions to the most pressing issues. Some stakeholders advocated for reforms directed toward changing front-line policing and improving accountability mechanisms. Others took the position that law enforcement is fundamentally flawed, and that meaningful transformation requires an end to police services as we know them and the creation of new public safety services.

This section of the report provides a summary of the key issues and potential solutions advanced by Black communities.

Transfer of current police functions to other agencies/organizations (de-tasking)

Members from some Black communities have called for "de-tasking and defunding"[1] and "disarming" in response to the over-policing and instances of excessive force. The OHRC sought to better understand the communities' perspectives on de-tasking, defunding, and disarming because these concepts also emerged as popular rallying cries and shaped much of the public debate surrounding policing reform in North American cities, including Toronto in 2020.

Calls for "de-tasking" are based on the idea that transferring services or tasks away from the police may help reduce negative outcomes. Many stakeholders stated that allocating funds to social programs instead of policing will create safer, healthier, and more equitable communities that are less reliant on police services.

What we heard from Black participants about transferring tasks to non-police agencies is summarized below. Further discussion of de-tasking and disarming is included in Chapter 7.

De-tasking is generally understood as "the delegation of current police tasks towards more appropriate organizations and institutions, thus reducing the negative consequences of police engagement in unsuitable activities and reducing the police budget."[2]

De-tasking may not reduce police budgets. It is possible that entities that assume tasks from the police can receive funding from sources outside of police budgets. In other words, police budgets are not necessarily tied to a particular task. As such, police funding may not be reduced if officers are assigned fewer tasks.

The idea of de-tasking received broad support during the OHRC's consultations, including from some police officers. One Black TPS officer stated:

> I would gladly take a pay cut if it meant more hands helping more people. I recognise that not everybody is a caregiver in our community, but if there are people who actually want to do the work – not just lip service to say, "oh, I could do that," or "it should be this." The people ready and willing to be like "OK, I'm ready to be a street social worker," "I'm ready to attend these calls at three in the morning on a Saturday for somebody who is in crisis." If there are people there, then yes, please…reallocate those funds.

> Because a lot of the calls are not police calls; those calls should be sent to agencies and organizations that are able to deal with individuals without the stigma that comes with being a police officer. Because not every person in crisis wants to see a police officer. They can be very triggering for certain communities, and in my experience, especially communities from other countries where people don't trust the police at all.[3]

In an interview following the policy roundtable, Anthony Morgan (Manager, Confronting Anti-Black Racism Unit, City of Toronto) stated:

> I think if they were to become a lot more scoped in their work ... the resources that they get [could go] to supporting communities more generally. So, it's not even through police, it's just from council, from city budgets [which could better support] food programs, mental health programs, education programs, job training, all those things.... I don't think it would solve everything, but I think it would address a lot.[4]

Many community members recognized the need to critically examine several of the functions currently assigned to police, and evaluate budgets required for policing services. Responding to people in crisis was routinely advanced as an area where de-tasking could improve community safety outcomes.

We also heard that transferring tasks to non-police community safety providers would help vulnerable communities who are fearful of contacting the police. Persons with precarious immigration status and sex-workers were identified as the types of vulnerable groups within Black communities who could benefit from improved access to community-based public safety services.[5] Community members also advocated for the creation of new public safety services or phone lines that could serve as an alternative to police service in appropriate circumstances.[6]

Mental health

During our consultations, members of Black communities consistently identified mental health crisis response as a task that could be more effectively performed by services staffed by mental health professionals rather than the police.

They questioned police officers' de-escalation training and ability to resolve crisis situations non-violently in light of several high-profile police shootings and fatal encounters. Some participants felt the enforcement mindset of police culture undermines relationships with Black people, and erodes the public's trust in officers' ability to assist persons in crisis.

Participants took the position that officers are unsuited to de-escalate mental health-related calls, since the very presence of an officer may heighten the anxiety experienced by some members of the public. They referenced the death of Regis Korchinski-Paquet and critiqued the current model for addressing persons in crisis.

They noted that fear and anxiety associated with engaging with police is amplified due to the history of over-policing and criminalization that has shaped their relationship with the police. These conversations included concerns about the disproportionate number of Black persons in crisis who have been fatally shot by the TPS.[7]

To reduce the number of police officers dispatched to crisis calls, participants noted the importance of effectively screening emergency calls and directing callers to alternative mental health supports.

In addition, members of Black communities supported calls to create a health-care-led response to crisis calls. Trained health-care professionals were viewed as being better equipped to de-escalate situations involving persons in crisis. The unique training provided to health-care professionals, and their ability to respond without the threat of lethal force or authority to charge or arrest an individual were cited as reasons for supporting a health-care model. Participants told the OHRC that an alternative crisis response unit could reduce or eliminate the need for Mobile Crisis Intervention Teams (MCITs), which include police officers (paired with mental health nurses).

Nonetheless, support for health-care-led responses to crisis calls was tempered by concerns about anti-Black racism and discrimination within health-care systems. Community members noted that the health-care system is not immune from systemic and anti-Black racism. Careful planning and training must take place to ensure health-care workers who respond to crisis calls do not subject Black people to racism. We heard:

> If the intent is just to re-invest in mainstream services, we will re-create an existing problem. We would just be re-creating and reinforcing racist systems. I know people want to move fast. I just hope it will not be with blinders on.[8]

Other police functions

Participants identified other police functions that could be performed by other services. For example, they questioned the logic of sending armed officers to address non-emergency occurrences such as excessive noise and public nuisance complaints.

For the OHRC's recommendations on de-tasking and reducing the scope of police activities, see Recommendations 7, 8, and 9.

Use of force

Participants spoke extensively about police use of force. We heard that much of the fear and mistrust between Black communities and the police stemmed from interactions where officers have improperly used force.

Some interviewees noted that officers' discretion to use force, including lethal force, is disproportionately exercised against members of Black communities. They contended that this is linked to stereotypes about Black persons, which cause them to be unfairly viewed as threats. Participants raised concerns about the extent to which race is involved when use-of-force incidents are reviewed. Gaps in this area may undermine efforts to hold officers accountable.

Participants also expressed frustration with the SIU and court decisions that have not held officers responsible for using excessive force because the officers claimed they were acting in self-defence.

Use-of-force options

When discussing use of force, community members routinely mentioned the names of Albert Johnson,[9] Lester Donaldson,[10] Andrew Loku,[11] and other Black persons who were fatally shot by the police. Considering the tragic circumstances surrounding these deaths, they questioned the utility of deploying officers armed with guns to service calls related to low-level criminal activity, persons experiencing mental health crises, or wellness checks.

There were mixed viewpoints on less lethal use-of-force options available to front-line officers. These options include conducted energy weapons (CEWs) – better known as Tasers – and batons. Acknowledging these weapons were less likely to cause civilian fatalities, participants expressed some support for using these options instead of firearms wherever possible. However, support was tempered by concerns about civilian fatalities linked to CEWs.[12]

Others noted that use-of-force equipment (e.g., guns or CEWs) will not reduce racial disparities in use-of-force data or fatalities. In their view, the goal should be to limit an officer's discretion to use force in all circumstances. One interviewee stated, "We also have to think about how the police use their bodies as weapons that choke people, beat people, and so forth. They are trained to inflict harm, so the issue is about more than taking away their guns[.]"[13]

We also heard concerns that expanding the availability of less lethal weapons may impede efforts to get officers to use de-escalation techniques without weapons.

Police stops

Members of Black communities and community advocacy groups told the OHRC about TPS officers conducting unnecessary stops, questioning, and searches. Many told the OHRC about being randomly stopped on the street for no reason. Black individuals of all ages have been stopped during normal day-to-day activities, such as when walking on public streets, at work, with friends and family, and in front of their homes.

This is consistent with what we heard across the province in *Under Suspicion: Research and consultation report on racial profiling in Ontario*. We also heard many stories of unnecessary charges and arrests – some describing an "arrest-first"[14] approach.

Concerns about unjust stops continue despite the enactment of *Ontario Regulation 58/16: Collection of Identifying Information in Certain Circumstances – Prohibitions and Duties* (O. Reg. 58/16) in 2017, which prohibited officers across the province from conducting arbitrary or random stops. The OHRC's consultations made it clear that these stops significantly impact members of Black communities and must be addressed. Street checks are addressed in **Recommendation 14**.

Accountability

The lack of accountability for racial profiling and racial discrimination was continually identified as a concern by Black communities. More specifically, the lack of accountability for fatal police shootings,[15] excessive use of force, and other forms of misconduct have left some with the perception that accountability is an afterthought for front-line officers and oversight bodies, including the TPSB, courts, and tribunals.

For example, concerns were raised about the TPSB's inability to get the TPS to comply with Board policy directives.[16] Community members also raised concerns about the extent to which the TPSB has adopted and implemented recommendations from past reports and coroner's inquests. In August 2020, for example, the Anti-Racism Advisory Panel (ARAP) recommended that the TPSB implement "a framework to monitor the implementation of the recommendations made by the jury in the inquest into the death of Andrew Loku" almost three years after the recommendations were released.[17]

Concerns about accountability and oversight were not limited to the TPSB:

> We need a re-assessment of the policing apparatus. The police union and the board, the SIU – 98% of the cases absolve the police of any wrongdoing. It's not just the boots on the ground. We need to look at all of that. Just dealing with the boots on the ground will not solve the problem.[18]

Diversity in employment and promotions

During consultations, the OHRC often heard that the TPS must reflect the diversity of the communities it serves to change or shift its culture of policing. People with lived experience of anti-Black racism can help improve internal processes and shift mindsets that have failed to address anti-Black racism and systemic racial bias in policing.

Participants emphasized that the TPS must consider diversity, demonstrated de-escalation skills, and combatting racism as criteria when assessing who should be promoted. This will help to create a more diverse workplace, including at the senior levels of policing, and help ingrain anti-racist principles throughout the TPS.

__For the OHRC's recommendations concerning diversity in employment, see Recommendations 10, 11, and 12.__

Rebuilding trust

Most people acknowledged that the TPS can make changes that could improve its relationship with Black communities. They identified revamping current police practices by eliminating the use of excessive force, and curtailing surveillance of marginalized communities, as steps in the right direction.[19]

Some people stated that addressing historical harm to Black communities must be part of the trust-building process. In this regard we heard that changes to current police practices cannot correct past harms, compensate victims of unjust stops and arrests,[20] or bring back lives lost during fatal encounters with police. As such, measures to address systemic harm should consider restorative actions and advance overall well-being within Black communities.

They shared that the trauma associated with a negative interaction with the police has the potential to seriously disrupt several aspects of an individual's life, including their education, employment, and personal relationships. Efforts to restore trust should consider issues beyond the traditional scope of police powers.

Some participants stated that the TPS has limited ability to provide full redress for the historical mistrust and the disparate outcomes that have burdened its relationship with Black communities.[21] Accordingly, the TPS and TPSB should support restorative efforts led by non-police organizations.

To address the issues outlined in this section, Black communities called for a re-imagination of police services and public safety at all levels of the TPS and TPSB. Accordingly, police leadership, the TPA, and front-line officers must address the barriers – including police culture – without delay.

The communities' perspectives grounded the Inquiry's report and helped to frame the recommendations to address anti-Black racism within the TPS.

__For the OHRC's recommendation regarding rebuilding trust and well-being in Black communities, see Recommendation 6.__

Roundtable

In May 2022, the OHRC, TPS, and TPSB held a policy roundtable to discuss longstanding issues that have undermined Black communities' relationships with the police, and to consider recommendations for change.

Participants included members of Black communities, government, academia, policing, and other stakeholders.

Issues explored included:

- discipline
- data collection
- training and education
- the nature and extent of discriminatory exercise of discretion and the role of Crown counsel
- use of force
- accountability, and
- enforcement mechanisms.

The OHRC also conducted follow-up interviews with some roundtable participants to gather additional information and perspectives.

Several themes arose from the roundtable that helped inform this report and the recommendations.

The need for greater transparency and community involvement in discipline

Roundtable participants expressed concerns regarding diminished public confidence in the police discipline processes, and made suggestions for reform. Participants also noted several factors that may have weakened public confidence in the police discipline system, including perceived negative treatment of Black complainants, long timelines, and police officers retiring before a final decision in a disciplinary matter is rendered.[22]

Participants suggested that it was important to find meaningful ways to inject community perspectives in the disciplinary process for formal and informal complaints.[23] Involving Black communities at every stage of the discipline process was viewed as a necessary step for advancing public confidence – including the need to increase the level of community input for more complex or serious matters.

Community participants identified the TPSB's ARAP as a good example of the police integrating the role of community perspectives when developing anti-racism initiatives.[24] Police stakeholders identified the need for improved public communication on how the discipline process works.

Improving the system for individual officer discipline

Participants discussed the relationship between systemic discrimination and individual acts of discrimination. They noted that contemporary efforts to address systemic discrimination should acknowledge that systemic issues may relate to the discriminatory conduct of individuals. They also noted that systemic issues are often used an excuse to not address an individual officer's discriminatory conduct.

Many expressed concern with the power imbalance in the disciplinary process. They felt it focuses too heavily on an officer's perspective and safeguarding confidentiality at the expense of improving accountability and public confidence.[25]

In addition, members from Black communities emphasized the need for internal investigators to have increased training and education to identify and handle anti-Black racism complaints. To this end, it was suggested that investigators must be required to have the cultural competency to assess all relevant factors in racial discrimination complaints.[26] As one policing representative noted, it is important to assess cultural competence "not just with front-line staff, but also upper ranks and the role of selecting leaders' cultural relevance and appropriateness to lead an environment in a time of unrest."[27]

Training is discussed further in Chapter 8.

Officer discipline is discussed further in Chapter 9.

Data collection, action, and accountability

During the roundtable session on race-based data collection, participants supported an expansion of current data collection efforts. They also emphasized that data collection must promote accountability and lead to tangible actions to address discrimination.

For example, multiple participants suggested that data could be used to proactively identify problems with an officer's conduct rather than relying on complaints from the public.[28] Another participant suggested that data, along with key performance indicators, could be used by the TPSB to measure the impact of reforms.[29]

Some participants warned that race-based data collection is not always neutral and can often be used to cause more harm to Black communities and not initiate any form of accountability.[30]

Roundtable participants also discussed legally binding consent decrees. A consent decree or consent order is an agreement between involved parties made legally enforceable by court order. Recently, consent decrees have been used by in the U.S. Department of Justice (DOJ) and various police services to allow the DOJ to oversee and resolve unconstitutional policing. As a part of this, consent decrees have been used in the United States as a vehicle to translate data collection into action.

Roundtable Keynote Speaker of Roy Austin,[31] former Deputy Assistant Attorney General of the Civil Rights Division of the DOJ, noted that consent decrees forced jurisdictions to collect data, leading "to a rapid decline of improper stop and searches,"[32] which had mostly been happening in Black and Brown neighbourhoods.

This decline can be attributed to the work of the DOJ and other organizations, including the American Civil Liberties Association (ACLU) to limit the stops and searches. As Mr. Austin emphasized, consent decrees "…were making a difference. Making a difference on racialized stops. Making a difference on racialized searches."[33]

Participants also recommended that the TPSB work with the Information and Privacy Commissioner to develop appropriate privacy guidelines for the collection, analysis, and public release of any race-based and human rights data.[34]

Finally, with respect to qualitative data, participants expressed concern about the role of community consultations in police reform projects. Community participants cited the long history of Black communities being "consulted to death" with little effective follow-up action.[35] Considering this history, new efforts to consult with people from Black communities are often viewed as a performative exercise.

In short, participants stressed that consultations should not be used to gather community input and data in isolation. Public consultations must be tied to processes that will inform discipline and accountability initiatives.

Data collection and the OHRC's corresponding recommendations are discussed at Chapter 9.

Cultural change in policing

One participant observed that systemic reform in the TPS and building Black communities' trust in policing will require "a radical re-imagining on how we expect officers to conduct themselves in order to address anti-Blackness."[36]

Most participants agreed that systemic reform must include a cultural shift in the role of policing itself. Throughout the sessions, participants emphasized that police leadership must demonstrate moral courage to address systemic anti-Black racism internally and within police service delivery if there is going to be meaningful change.

Neighbourhood policing

Neighbourhood policing programs were viewed by policing participants as a positive model for forming genuine relationships with communities. On the other hand, academic and community participants noted the model has been a contested concept.

Community participants expressed concerns about over-policing and stated that they would like to see less police presence in favour of other types of first responders or service providers. This is especially true for mental health issues, and wellness issues for unhoused persons.[37]

Consultation with TPS officers on anti-Black racism

It was important for the OHRC to hear from policing experts, leaders, and front-line officers during this Inquiry.

Police officers

The OHRC consulted with TPS leadership and representatives of the TPSB and Toronto Police Association (TPA), and conducted a survey of officers (below the rank of inspector). Each of these groups shared their perspective on how to address systemic discrimination in policing.

At the Inquiry's launch in 2017, the OHRC reached out to officers through a public call, and again in March 2021 through a Service-wide communication facilitated by the TPS that was sent to all officers. The Service-wide communication advised that the OHRC was interested

in officer feedback on topics including but not limited to: police culture, training, policies, procedures, accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities.

The OHRC interviewed two former and one current officer through the public call issued in 2017. Only five officers agreed to be interviewed or provided detailed feedback following the Service-wide communication in 2021.

Four of the five officers who participated in 2021 indicated deep concerns about the culture at the TPS. The officers shared that TPS culture has a firmly entrenched status quo that perpetuates racism and discrimination against non-White Service members, and a common practice of covering for the misconduct of fellow officers. Further, they felt that this culture resists any actions or attempts at change, including education, training, and increased diversity of Service members and leadership.

They also noted incidents and practices of anti-Black racism and racial discrimination that occur when providing police services, and a common practice of covering for the misconduct of fellow officers.

Interviews with members of the Black Internal Support Network (BISN)

The OHRC also interviewed seven uniform and civilian members of the BISN, an employee group of the TPS, to learn about their experiences of anti-Black racism within the TPS, police culture, training, policies, procedures, accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities.

Everyone interviewed discussed how TPS culture firmly entrenches a status quo that perpetuates racism and discrimination. Further, efforts to address racial discrimination, including education, training, and increasing the diversity of Service members and leadership, were met with resistance. One officer shared that some officers made light of training sessions on microaggressions and discrimination.

BISN members acknowledged the progress made by the TPS in addressing overt forms of anti-Black racism. For example, senior officers noted that incidents of explicit racial slurs and derogatory language that occurred in the 1990s would no longer be tolerated. Overt forms of racism are taken more seriously within the TPS and no longer occur regularly.[38] One officer observed increased openness and sensitivity to marginalized community members.[39]

However, covert forms of anti-Black racism persist. BISN members said these are difficult to raise and challenge. One officer noted there is a "blue wall of silence" that prevents the TPS from substantively addressing race-related issues.[40] Many felt complaints of anti-Black racism or racial profiling were not handled appropriately in the TPS, as there is a tendency to downplay concerns or suggest that issues raised by Black employees were not connected to racial bias.[41]

Members of the BISN told the OHRC that Black Service members were reluctant to raise issues of anti-Black racism because they have experienced denials, reprisal, or harassment when they did so. Members shared that they experienced increased monitoring and scrutiny when they raised concerns about racial discrimination in the workplace.

Uniformed and civilian members also shared their views on the impact of anti-Black racism on service delivery. They described the difficulty of building confidence in policing for Black communities and the historical nature of these concerns in general.

For example, one officer noted that incidents that occurred in the past have a bearing on current attitudes toward the police. The officer shared that early in his career, he was stopped at gunpoint by a White officer while on duty in plainclothes. He stated that it took him "years" before he could speak about it or raise the issue with management out of fear of not being believed.[42]

He said that the associated trauma of this and other incidents informed his experience as a Black officer and shapes Black communities' perception of police services. Another officer stated:

> Even I find myself shaking when I see [police] lights and I am an officer. We fear that we might have a negative interaction because of our skin colour. This is a daily dance for me that I think about a lot so I know exactlywhy the community is concerned.[44]

Black Service members expressed support for increasing mental health and social supports and advocating for more government funding for other non-police interventions. Most BISN members acknowledged how, in many ways, policing has failed Black communities, and understood how this history gives rise to calls for restructuring law enforcement and public safety services.

Officers and civilian employees also stated that beyond funding, the police must modernize by developing genuine relationships and "showing their value by working with and not telling people always what to do … finding out what the community needs truly are."[45]

Uniform and civilian staff members of the BISN expressed serious concerns about increased scrutiny in the workplace, being subject to harsher forms of discipline compared to their non-Black counterparts, and being passed over for promotions. They also expressed concerns that their engagement with TPS leadership has not resulted in effective change.

In addition, the structures of police governance and police culture were identified as factors that inhibit organizational change. Most Service members described the strong adherence to seniority and obedience, which leaves little room for dissent due to fear of reprisal, harassment, or embarrassment. Individual BISN members also expressed scepticism about the TPA's willingness to support Black Service members when issues regarding discrimination arise.

Survey

As part of the effort to ensure that the Inquiry included a broad range of policing, community safety, and well-being perspectives, the OHRC worked with the TPS and TPSB to conduct a confidential and voluntary online survey for TPS officers between October 12 and 26, 2022.

TPS uniform officers below the rank of inspector were invited to share their perspectives on issues of racism, particularly anti-Black racism, within the TPS and in officer interactions with civilians. The TPS distributed the survey via an "E-update" email and strongly encouraged participation.

The survey was sent to TPS officers and staff four months after the TPS confirmed that it continues to disproportionately use force and other enforcement actions against Black communities, based on its race-based data collection on use of force and strip searches.[45]

The OHRC analyzed 113 completed survey responses. An additional 152 survey responses were not analyzed because: 11 respondents declined to provide their consent for the OHRC to collect their survey responses, 110 respondents declined to provide name or badge number to participate in the survey, and 31 respondents were not uniform officers below the rank of inspector.

The findings provide a glimpse of some officers' perception of anti-Black racism within the organization and in service delivery to the public. However, the results are not a representative sample of TPS officers' and civilian staff's views. In other words, the survey results reflect the views of the officers who responded and should not be generalized to all uniform officers. Nonetheless, evaluating the survey results along with the interviews with officers and BISN members provides insight on some Service members' views about anti-Black racism in the TPS.

Of the survey participants:

- 26% agreed or strongly agreed that there is systemic anti-Black racism in Toronto policing services.

- 62% did not know if systemic anti-Black racism is present in Toronto policing services.

- 66% did not know if there is systemic anti-Black racism in employment at the TPS.

- 77% strongly or somewhat agreed that they were satisfied with TPS and TPSB's efforts to address anti-Black racism in policing services.

- 66% strongly or somewhat agreed that they are satisfied with TPS and TPSB's efforts to address anti-Black racism in employment.

In written comments, several respondents indicated that they found existing training to be excessive and unhelpful. Some respondents indicated that bias and racism do not exist in the TPS, and they did not change their behaviour on duty in response to training because they do not treat people with bias. "Repeatedly being told your organization is racist, when it is not, is insulting and it begins to have the opposite effect intended." (male constable, age 36-40)

The TPS officer survey questions are presented in Appendix 11.

Chapter 4 Endnotes

[1] Within the current discourse on police reform, defunding and de-tasking have occasionally been used interchangeably. However, defunding refers to the reduction or elimination of police budgets.

[2] Sarah Tran, "Detasking police and restructuring community safety – Professor Akwasi Owusu-Bempah featured in discussion about police and public safety on The Agenda," *University of Toronto Department of Sociology News*, online: University of Toronto https://www.sociology.utoronto.ca/news/de-tasking-police-and-restructuring-community-safety-professor-akwasi-owusu-bempah-featured. Board of the Police Commissioner's Subcommittee to Define Defunding Police, *Defunding the police: Defining the way forward for Halifax Regional Municipality (HRM)*, online: (pdf): *Halifax* https://cdn.halifax.ca/sites/default/files/documents/city-hall/boards-committees-commissions/220117bopc1021.pdf.

[3] OHRC interview with BISN member (27 July 2022).

[4] Interview with Anthony Morgan, Manager, Confronting Anti-Black Racism Unit, City of Toronto (28 September 2022).

[5] OHRC interview with Black Femme Legal, Samantha Pieters (18 June 2021).

[6] OHRC interview with Sam Tecle (20 November 2020).

[7] According to Justice Iacobucci, the term "in crisis" refers to a person "whose behaviour brings them into contact with police either because of an apparent need for urgent care within the mental health system, or because they are otherwise experiencing a mental or emotional crisis involving behaviour that is sufficiently erratic, threatening or dangerous that the police are called in order to protect the person or those around them." See: Iacobucci, *Police Encounters with People in Crisis* (2014), at 4, para 2; Gerry McNeilly, *Police Interactions with People in Crisis and Use of Force: OIPRD Systemic Review Interim Report (*2017*)*, at 4.

[8] OHRC telephone consultation with Across Boundaries (15 December 2020).

[9] Albert Johnson, 35, was shot and killed in his apartment by two Toronto Police officers in 1979. The officers were both charged with manslaughter but were acquitted in November 1980. OHRC, *Timeline of racial discrimination and racial profiling of Black persons by the Toronto Police Service, and OHRC initiatives related to the Toronto Police,* online: OHRC www.ohrc.on.ca/en/book/export/html/23851.

[10] Lester Donaldson, 44, was shot and killed in his rooming house by a Toronto Police officer in 1988. The police said they were responding to a call about a man holding hostages but found Donaldson alone in his room. He was shot for allegedly lunging at the officer with a knife. The officer was charged with manslaughter but was later acquitted. OHRC, *Timeline of racial discrimination and racial profiling of Black persons by the Toronto Police Service, and OHRC initiatives related to the Toronto Police,* online: OHRC www.ohrc.on.ca/en/book/export/html/23851.

[11] Andrew Loku was shot and killed by a Toronto Police officer in 2015. Loku was shot in the hallway of his residential building, after he was confronted by officers. Loku was holding a hammer at the time. The apartment complex Loku lived in was affiliated with the Canadian Mental Health Association. See: Special Investigations Unit, News Release (18 March 2016) https://www.siu.on.ca/en/news_template.php?nrid=2578; Canadian Mental Health Association, Andrew Loku Inquest, Online: https://toronto.cmha.ca/wp-content/uploads/2018/11/ANDREW-LOKU.pdf

[12] Shanif Nasser, "A Young Black man was fatally tasered in his own backyard – now his family is demanding answers," CBC News (21 June 2020), online: www.cbc.ca/news/canada/toronto/clive-mensah-black-taser-police-1.5655022.

[13] OHRC consultation with Across Boundaries (15 December 2020).

[14] An arrest-first approach includes arresting a civilian first and attempting to determine if there are grounds for the arrest later.

[15] During our consultations, stakeholders regularly recalled the fatal shooting of Andrew Loku. The officer who shot Loku was cleared of any charges by the Special Investigations Unit in 2016. Special Investigations Unit, News Release (18 March 2016) https://www.siu.on.ca/en/news_template.php?nrid=2578

[16] "Under the *Police Services Act* in Ontario, policies are made by the police service boards (as overreaching direction to the Chief of Police), while procedures are issued by the chief or commissioner of the OPP (as operational orders to all the members of a police service) – Failure to abide by these policies and procedures can be the subject of misconduct proceedings." See Lorne foster et al. *Racial Profiling and Human Rights in Canada: The New Legal Landscape*, Irwin Law 2018. At 109.

[17] Anti-Racism Advisory Panel, TPSB Online: https://www.tpsb.ca/advisory-panels/24-panels-and-committees/94-arap.

[18] OHRC consultation with the Zero Gun Violence Movement, Louis March (29 December 2020).

[19] OHRC consultation with Jane Finch Action Against Poverty (20 November 2020).

[20] "With the growing demand for Ontarians to undergo police record checks in order to be considered for employment, volunteer, housing, insurance and academic opportunities, concerns about the negative impacts of non-conviction police records are mounting. Thousands of Ontarians have police records – that they are often unaware of – that could be disclosed on police record checks. A recent report by the Canadian Civil Liberties Association puts the number of Canadians with a police record as high as one in three. Marginalized populations such as those with mental health issues, homeless populations, racialized populations, and those with developmental disabilities come into disproportionate contact with police and are therefore more likely to have a police record." John Howard Society of Ontario and the Canadian Civil Liberties Foundation, *On the Record: An Information Guide for People Impacted by Non-Conviction Police Records in Ontario* (October 2014) online at http://www.johnhoward.on.ca/wp-content/uploads/2014/11/On-the-Record-1-FINAL.pdf, at page 6.

[21] For example, the *Police Services Act* does not explicitly speak to providing social services and other community based-supports that may be required to address social barriers created by police misconduct or racial bias.

[22] OHRC policy roundtable, Session 1 (30 May 2022).

[23] A formal complaint generally refers to a member of the public filing a complaint with a police oversight body, such as the OIPRD. Informal complaints refer to instances where a member of the public expressed concerns to a police oversight body without filing a complaint.

[24] For an overview of the Anti-Racism Advisory Panel, see Chapter 9.

[25] OHRC policy roundtable, Session 1 (30 May 2022).

[26] OHRC policy roundtable, Session 1 (30 May 2022).

[27] OHRC policy roundtable participant, Session 3 (30 May 2022).

[28] OHRC policy roundtable, Session 1 (30 May, 2022).

[29] OHRC policy roundtable, Session 3 (30 May, 2022).

[30] OHRC policy roundtable, Session 5 (31 May 2022).

[31] Mr. Austin was also White House Deputy Assistant to the President for Urban Affairs, Justice and Opportunity. In this position, he co-authored a report on Big Data and Civil Rights, worked with the President's Task Force on 21st Century Policing. and helped develop the Police Data Initiative.

[32] Roy Austin, OHRC policy roundtable, Session 4 (31 May 2022).

[33] Roy Austin, OHRC policy roundtable, Session 4 (31 May 2022).

[34] OHRC policy roundtable participant, Session 5 (31 May 2022).

[35] OHRC policy roundtable participant, Session 3 (30 May 2022).

[36] OHRC policy roundtable participant, Sessions 6 and 7 (31 May 2022).

[37] OHRC policy roundtable participant, Session 1 (30 May 2022).

[38] OHRC consultation with BISN member (September 6, 2022).

[39] OHRC consultation with BISN member (September 6, 2022).

[40] OHRC consultation with BISN member (July 27, 2022).

[41] OHRC consultation with BISN member (6 September 2022).

[42] OHRC consultation with BISN member (6 September 2022).

[43] OHRC consultation with BISN member (27 July 2022).

[44] OHRC consultation with BISN member (2022).

[45] TPS, *Race & Identity Based Data Collection Strategy, Understanding Use of Force & Stop Searches in 2020 Detailed Report*. June 2022 Online: https://www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf;Samantha Beattie, "Toronto Police Continue To Disproportionately Shoot, Kill And Use Force On Black People: Report" *Huffington Post* (10 December, 2018) online: https://www.huffpost.com/archive/ca/entry/toronto-police-anti-black-racism_ca_5cd57ce9e4b07bc729788862.

Chapter 5 - Stop and search: gaps in regulations, policies, and procedures

As set out with data and evidence in Chapter 3, Black persons across Toronto are disproportionately stopped and searched by the TPS.

This systemic problem is a result of significant gaps in the provincial regulations, TPSB policies, and TPS procedures that govern police interactions with the public – especially in situations not involving arrests.

Chapter 5 identifies these gaps and ways to close them to reduce random stops and searches.

Support for reforming police stops

In Ontario and internationally, there is ample support for providing greater and more detailed guidance in relation to stops and searches.

In 2022, then-Interim Police Chief Ramer stated, "There is absolutely no place for carding … I know there [are] proponents out there … there is no basis for carding and I would never apologize for not supporting it."[1]

The Commission on Systemic Racism in the Ontario Criminal Justice System found that "wherever broad discretion exists, racialization can influence decisions and produce racial inequality in outcomes."[2] The Commission recommended that guidelines be created "for the exercise of police discretion to stop and question people, with the goal of eliminating differential treatment of [B]lack and other racialized people."[3]

In New York City (NYC), part of the ruling in *Floyd vs City of New York* found that the disproportionate use of stop and frisk constituted a pattern of racial profiling and violated the U.S. Constitution. Judge Scheindlin ordered the NYC Police Department to revise its stop and frisk policies to meet constitutional standards and New York state law.[4] This change contributed to a dramatic reduction of stops while crime rates in NYC continued to fall.[5]

In Baltimore, the U.S. Department of Justice (DOJ) found that systemic deficiencies, including in policies, contributed to unconstitutional searches by the Baltimore Police Department (BPD).[6] The consent decree between the DOJ and BPD includes criteria for conducting searches to adhere to constitutional standards.[7]

The European Commission against Racism and Intolerance recommended that governments of member states "introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria."[8]

Ontario Regulation 58/16: stops in non-arrest circumstances

As noted in Chapter 3, Ontario Regulation 58/16: *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties* (O. Reg. 58/16) was enacted in January 2017.

Its goal was to ensure that police–public interactions are conducted without bias or discrimination, and to prevent random stops of individuals to collect identifying information.[9] O. Reg. 58/16 applies when an officer is:

    a. inquiring into offences that have been or might be committed;
    b. inquiring into suspicious activities to detect offences; or

c. gathering information for intelligence purposes.

However, O. Reg. 58/16 **does not apply** in many non-arrest circumstances. For example, it does not apply where the officer is:

a. talking to a driver during a traffic stop;
b. investigating a specific crime;
c. not asking for identifying information; or
d. executing a warrant.[10]

The OHRC has repeatedly maintained that O. Reg. 58/16 has not achieved its purpose and should be broadened in scope.[11] There cannot be accountability for racial profiling in policing if only a small portion of interactions is captured under the regulation.

The evidence demonstrates that racial profiling can and often does occur when police are talking to a driver, investigating a specific offence (which can be interpreted very broadly), or when officers do not ask for identifying information. Excluding such interactions undermines the goal of identifying and eliminating racial profiling in police interactions with the public.

Before O. Reg. 58/16, thousands of TPS street checks[12] were documented. Since it came into effect, the TPS has reported conducting only 28 street checks: 25 in 2017, two in 2018, and one in 2019.[13]

When asked to explain the decline, then-Chief of Police Mark Saunders said that front-line officers are not doing a lot of proactive policing because they do not have a lot of opportunities to do so. He said that the TPS had examined whether street checks were continuing, "under a different methodology and calling it something else so it could get hidden, and we didn't find any of that."[14]

However, *A Collective Impact* and this report substantiate that the TPS continues to stop and search civilians at a high rate (much higher than other cities in Ontario), and that Black people in Toronto continue to be stopped and searched at a rate far higher than people from other racial groups.[15] See also Dr. Wortley's findings summarized in Chapter 3 and in Appendix 2.

Given the discriminatory history of carding and street checks, the circumstances where TPS and other police officers in Ontario are allowed to approach individuals in a non-arrest scenario should be narrowed and set out in O. Reg. 58/16. Placing tighter restrictions on the circumstances when officers can or cannot stop individuals would help eliminate random stops – a consistent demand from Black communities and human rights organizations.[16]

Improper and disproportionate stops and searches of members of Toronto's Black communities are compounded because O. Reg. 58/16 does not require police to provide individuals with a full explanation of their rights after being detained.

Section 6(1) of the regulation only requires police to inform the individual that they are not required to provide identifying information to the officer and explain why the police officer is attempting to collect identifying information about the individual.[17] This is insufficient.

According to s. 10 of the *Canadian Charter of Rights and Freedoms* (Charter), all people have certain rights that are triggered by a police detention. Those rights should be fully explained to the individual being stopped, who may or may not be aware of their rights, or might be too scared or intimidated to assert them.

This is especially so for Black persons who may feel that they cannot disregard police directions or assert their right to walk away, because police will consider it evasive and use it to constitute sufficient grounds for an investigative detention.[18]

O. Reg. 58/16 should be amended to provide clear criteria when police officers can and cannot stop members of the public in non-arrest circumstances. It should also be amended to require a full explanation of detained persons' rights.

For the OHRC's recommendation related to amending O. Reg. 58/16, see Recommendation 87.

TPSB policies and TPS procedures: stops in non-arrest circumstances

Deficiencies identified in O. Reg. 58/16 are reflected in TPSB policies and TPS procedures guiding police interactions with the public. Specifically, the TPSB's Policy on Regulated Interaction with the Community and the Collection of Identifying Information*,* and TPS Procedure 04-14, Regulated Interactions share the limited scope of O. Reg. 58/16. They do not adequately restrict police officers' discretion to stop – leaving space for the police to use their stop-and-search powers in a discriminatory manner.[19]

Policies and procedures also do not require officers to advise individuals about their rights upon detention, including their right to leave. This may give rise to arbitrary detentions, contrary to s. 9 of the Charter.[20]

TPSB policies and TPS procedures should provide clear criteria for police stops in non-arrest circumstances. The TPSB and TPS should not wait for the provincial government to implement these changes. Given their acknowledgements of anti-Black racism, the TPSB and the TPS can act immediately. The acknowledgements are an important first step, but concrete and immediate change is required.

For the OHRC's recommendation for revising TPSB policies and TPS procedures guiding police interactions with the public under O. Reg. 58/16, see Recommendation 14.

Right to search

Section 8 of the *Canadian Charter of Rights and Freedoms* (Charter) guarantees the right to be secure against unreasonable search or seizure.

To be reasonable and therefore consistent with s. 8 of the Charter, a search must meet three requirements:

a. The search must be authorized by law;
b. The law authorizing the search must be reasonable; and
c. The search must be conducted reasonably.[21]

Broadly speaking, this means that the police do not have the right to search someone unless there is some legal justification.

For example, the police are not legally entitled to randomly stop individuals and search them or their vehicles. Such searches would constitute a breach of s. 8 of the Charter, as well as the s. 9 protection against arbitrary detention.

Investigative detention and pat-down searches

The police are entitled to stop people briefly to conduct an investigative detention. An investigative detention is legal if the police have reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime, and that the detention is reasonably necessary based an objective view of the circumstances.

The detention should be brief, and the individual must be advised, in clear and simple language, of the reasons for the detention. Where a police officer has reasonable grounds to believe that their safety or the safety of others is at risk, the officer may engage in a protective or pat-down search of the detained individual.[22]

The scope of the protective or pat-down search is limited to exterior patting of clothing such as pockets, waistband, or areas that may reasonably conceal such items as weapons or implements that may be used as weapons. The search is usually performed with open hands to maximize the ability to detect weapons through clothing. This search may also be described as a "safety search."[23]

Search incident to arrest and frisk searches

The police are also permitted to conduct a "search incident to arrest." A valid search incident to arrest requires that:

a. The individual searched has been lawfully arrested;
b. The search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose related to the reasons for the arrest; and
c. The search is conducted reasonably.[24]

In practical terms, this means that when the police lawfully arrest someone for an offence, they are permitted to search or frisk them for evidence of crime that may be on their person, or for safety reasons.

This may include emptying and searching pockets as well as removing clothing, which does not expose a person's undergarments, or the areas of the body normally covered by undergarments. Removing clothing such as belts, footwear, socks, shoes, sweaters, extra layers of clothing, or the shirt of a male would all be included in a frisk search. A frisk search may be started in the field and concluded at the station.[25]

Search criteria

O. Reg. 58/16 does not address police searches. Police searches are addressed by TPSB's policy on searches[26] and the TPS Search of Persons Procedure (01-02).[27] However, they do not provide sufficient guidance on the circumstances where protective searches (formerly Level 1) and frisk searches (formerly Level 2) are appropriate.

TPS's Search of Persons Procedure reminds officers that they must have legal authority and grounds for conducting a search. The procedure notes that a search must be reasonable and justified given all the circumstances, but offers little guidance on how to identify appropriate circumstances for conducting a protective search.[28]

The risk assessment included as an appendix to the procedure does not address this concern.[29] The appendix focuses on searches incident to arrest, strip searches and body-cavity searches. It sets out case law relevant to searches incident to arrest and risk factors to be considered prior to conducting a strip search. The appendix does not include a similar list of factors for protective searches that occur in non-arrest scenarios.

Furthermore, the procedure fails to remind officers that race should not be a factor when considering the grounds conducting a search.

Race-based data collection

TPS and TPSB's data collection efforts do not mandate race-based data collection on the full range of searches that officers conduct.[30] TPSB's Policy on Searches, the TPS Search of Persons Procedure, TPS Procedure on the Collection, Analysis and Reporting of Race and Identity-Based Data, and TPS Race & Identity Based Data Collection Strategy do not require race-based data collection on protective searches, frisk searches or cavity searches.[31]

In response to the Office of the Independent Police Review Director's report, "Breaking the Golden Rule: A review of strip searchers in Ontario," race-based data on strip searches was included in the TPS Race & Identity Based Data Collection Strategy.[32]

However, the TPS chose to exclude protective searches and frisks from the strategy. Their reasoning is unclear, given the wide range of information being collected about searches. For example, the Search of Persons Procedure notes that, where practical, all protective and frisk searches should be recorded.

In addition, there are forms that officers complete once a search has been conducted – a "search in the field only" form if the person is not brought into the station and a "booking hall search" form if they are. Officers are also required to make notes in their memo books. Each of these tasks provides the TPS with an opportunity to mandate the collection of relevant race data.

For further discussion and recommendations on data collection, please see Chapter 9.

The absence of guidance gives TPS officers too much discretion and broad scope to engage in improper searches. Given the disproportionate number of strip searches[33] and impact of other searches on members of Black communities in Toronto, the absence of detailed criteria for searches and robust data collection contributes to systemic discrimination. Accordingly, these policies and procedures must be amended to have clear criteria for when a search is lawful.

For the OHRC's recommendation to improve the TPS Search of Persons procedure, see Recommendation 15.

Street check data collected prior to 2017

The TPS should destroy personally identifiable information from carding/street check data collected before January 1, 2017, unless it is being used for a purpose set out in subsection 9(10)(2) of O. Reg. 58/16, in which case it should be destroyed once it is no longer being used for that purpose.

As documented previously, the TPS engaged in discriminatory carding and street checks for many years prior to (and after) the enactment of O. Reg. 58/16 in 2017.

It is concerning that the TPS collected and retains significant personal data, in particular about Black persons, obtained through racial profiling.[34]

Many, including the OHRC,[35] argued that the data should be destroyed on the basis that it was improperly collected, and the police were never entitled to collect or maintain such personal information. Others argued it should be maintained for future litigation purposes or for possible missing persons investigations.

To date, the provincial government, the TPSB, and the TPS have not purged the information from police databases. Rather, they implemented a regime that restricts access to the data but does not require it to be destroyed.[36]

Justice Tulloch's recommendation

In 2018, then-Justice Michael Tulloch examined this issue as part of his *Independent Street Checks Review*. He recommended that all historical data should be automatically destroyed five years after it was collected, unless it is being used for a purpose set out in subsection 9(10)(2) of O. Reg. 58/16, in which case it should be destroyed once it is no longer being used for that purpose. He also noted that a police service may choose to destroy historical data earlier than five years after it was collected.[37]

The Regulated Interactions Review Panel recommendations

As required under the TPSB's policy, the TPSB established a Regulated Interactions Review Panel (RIRP) composed of three persons: a Board member, a retired judge, and a community member. The mandate of the RIRP includes reviewing the Chief's quarterly report for compliance with the TPSB's policy provisions on access to historical street check data, identifying trends, and making recommendations.[38]

The RIRP reviewed the following data in the Chief's quarterly reports from 2018 about access to historical street check data, which included the following statistics regarding operational access:[39]

Operational access to historical street check data

	Legal	Investigative	Total
2017	11	17	28
2018	5	3	8

The RIRP determined that the information complied with the policy requirements for access to historical street check data. However, the RIRP asked, "What types of investigative reasons are leading to these operational access requests being made?"[40] The small number of requests for investigative access, particularly in 2018, reinforced the Review Panel's view that:

- The number of people with access to the data does not seem to align with the requests being made; and

- Based on the trends related to operational access, there is a live question whether maintaining operational access, remains necessary.[41]

The RIRP recommended that:

- The TPSB review its policy in light of Justice Tulloch's, as he was then, *Report of the Independent Street Checks Review*, with particular attention to the portion of its Policy that currently requires the retention of Historical Contact Data; and

- If the TPSB determines that retaining historical street check data remains necessary (in whole or in part), the Chief eliminate operational access to the data while maintaining access for legal and other related purposes.[42]

Privacy considerations for race-based data are always important. This is especially true for data collected in the absence of any regulatory framework, as was the case with street check data for several years leading up to 2017. Given that more than five years have passed since 2017 and the passing of O. Reg. 58/16, there is no reason for the TPS to maintain this personal information.

For the OHRC's recommendations on data collected from carding/street check data, see Recommendation 64.

Chapter 5 Endnotes

[1] OHRC interview with the then-Interim Chief James Ramer (26 October 2022).

[2] Margaret Gittens et al, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995) at iv, ix and 359. Similarly, in *R v Brown*, the Ontario Court of Appeal determined that "racial profiling can be a subconscious factor impacting on the exercise of a discretionary power in a multicultural society"; *R v Brown*, [2003] 64 OR (3d) 161 at para 81.

[3] Margaret Gittens et al, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995) at iv, ix and 359.

[4] *Floyd et al v City of New York et al*, (2013) 8 Civ 1034 (SAS); 12 Civ 2274 (SAS).

[5] Michael D White and Henry F Fradella, *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic* (New York: NYU Press, 2016).

[6] U.S. Department of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department* (10 August 2016) at 30–34 and 129–130, online (pdf): https://www.justice.gov/crt/file/883296/download.

[7] City of Baltimore, "City of Baltimore Consent Decree" (2017), online: https://consentdecree.baltimorecity.gov.

[8] European Commission against Racism and Intolerance, "ECRI General policy recommendation no. 11 on combating racism and racial discrimination in policing adopted on 29 June 2007" (Strasbourg: European Commission against Racism and Intolerance, 2007), online (pdf): https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf.

[9]The Honourable Michael H. Tulloch, *Report of the Independent Street Checks Review* (Ontario: Queen's Printer for Ontario, 2018) at Appendix B Order in Council and Terms of Reference, online (pdf): https://opcc.bc.ca/wp-content/uploads/2019/06/StreetChecks.pdf. The *Report of the Independent Street Checks Review* notes that the purpose or objective of the Regulation is not reflected in the Regulation. Nonetheless, the purpose is described in the Street Checks Review as the prevention of arbitrary or random stops of individuals for the sole purpose of collecting their identifying information (at page 83). From the start of the process of drafting the regulation, the OHRC made several submissions to the Ministry of Community Safety and Correctional Services (MCSCS) geared towards reducing racial profiling in street checks and other police practices. See OHRC, "Joint Response to Ontario Draft Regulation" (28 October 2015), online: https://studylib.net/doc/9676903/doc---ryerson-university; OHRC, "OHRC Submission to the MCSCS on street checks" (11 December 2015), online: https://www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks-0; OHRC, "Strategy for a Safer Ontario – OHRC submission to MCSCS" (29 April 2016), online:

https://www.ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs; OHRC, "Letter to Minister David Orazietti regarding Street Checks Regulation" (10 August 2016), online: https://www.ohrc.on.ca/en/news_centre/letter-minister-orazietti-regarding-street-checks-regulation.

[10] TPSB, Policy on regulated interaction with the community and the collection of identifying information (17 November 2016), online: https://www.tpsb.ca/policies-by-laws/board-policies/178-regulated-interaction-with-the-community-and-the-collection-of-identifying-information; TPS, Procedure 04-14 Regulated Interactions (3 January 2020), online (pdf): https://www.tps.ca/media/filer_public/2e/19/2e194193-4e37-44d5-b151-1432715dcb3c/5060f77e-187d-428c-b753-12145560bb50.pdf; Government of Ontario, "New changes to policing: When and how a street check (also known as carding) can be done" (21 December 2016), online: www.ontario.ca/page/street-checks; Collection of Identifying Information in Certain Circumstances – Prohibition and Duties, O Reg 58/16, ss 1, 4.

[11] OHRC, "OHRC Submission to the Independent Street Checks Review" (1 May 2018), online: www.ohrc.on.ca/en/ohrc-submission-independent-street-checks-review.

[12] Street checks are defined as "identifying information obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation." See The Honourable Michael H Tulloch, *Report of the Independent Street Checks Review* (Ontario: Queen's Printer for Ontario, 2018) at xiv, online (pdf): https://opcc.bc.ca/wp-content/uploads/2019/06/StreetChecks.pdf.

[13] Scot Wortley, Racial Profiling and the Toronto Police Service: Evidence, consequences and policy options (OHRC, September 2021) at 55. See Appendix 3.

[14] OHRC interview with Chief Mark Saunders (23 July 2020).

[15] see 5, p. 62.

[16] See also; OHRC, *Framework for change to address systemic racism in policing* (29 July 2021), online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

[17] Sections 6(2) and 6(3) also set out several exceptions to this requirement.

[18] *R v Grant*, 2009 SCC 32 at para 169.

[19] OHRC, OHRC Submission to the Independent Street Checks Review (1 May 2018), online: www.ohrc.on.ca/en/ohrc-submission-independent-street-checks-review.

[20] Legal opinion letter from J. Michael McDonald and Jennifer Taylor to Nova Scotia Human Rights Commission (15 October 2019) regarding "NS Human Rights Commission – Independent Legal Opinion on Street Checks," online (pdf): https://humanrights.novascotia.ca/sites/default/files/editor-uploads/independent_legal_opinion_on_street_checks.pdf.

[21] *R v Caslake*, [1998] 1 SCR 51 at para 10.

[22] *R v Mann*, 2004 SCC 52.

[23] TPS, Procedure 01-02 Search of Persons (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/a0/f9/a0f91c6c-e992-4036-badb-1f14fe1a6980/8e76ce5e-27b3-465d-b31a-60e580a1de8a.pdf.

[24] *R v Fearon*, 2014 SCC 77.

[25] TPS, Procedure 01-02 Search of Persons (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/a0/f9/a0f91c6c-e992-4036-badb-1f14fe1a6980/8e76ce5e-27b3-465d-b31a-60e580a1de8a.pdf.

[26] TPSB, Adequate standards compliance policy, XXXIXLE-012 – Search of persons, online: https://tpsb.ca/policies-by-laws/adequacy-standards/38-part-5/242-xxxix

[27] TPS, Procedure 01-02 Search of Persons (24 November 2021) at Appendix B (8 February 2016), online (pdf): https://www.tps.ca/media/filer_public/fb/89/fb89bb92-f2c3-45a9-8548-c125cfaf1d80/d2e139f8-de9e-4fb9-ae0f-225f3d4e34e7.pdf.

[28] TPS, 01-02 Appendix B: Risk Assessment – Type of Search (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/fb/89/fb89bb92-f2c3-45a9-8548-c125cfaf1d80/d2e139f8-de9e-4fb9-ae0f-225f3d4e34e7.pdf sets out case law relevant to searches incident to arrest and risk factors to be considered prior to conducting a strip search. The appendix does not include a similar list of factors for protective searches.

[29] TPS, 01-02 Appendix B: Risk Assessment – Type of Search (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/fb/89/fb89bb92-f2c3-45a9-8548-c125cfaf1d80/d2e139f8-de9e-4fb9-ae0f-225f3d4e34e7.pdf.

[30] TPS procedure notes that officers may conduct protective searches, frisk searches, strip searches, and body cavity searches. TPS race data collection strategy only reports on strip searches.

[31] Pursuant to the TPS's Search of Persons procedure, all protective and frisk searches must be recorded on audio and video, and captured in the officer's memorandum book.

[32] https://www.oiprd.on.ca/wp-content/uploads/OIPRD_Breaking-the-Golden-Rule_Report_Accessible.pdf.

[33] Despite a decline in the overall number of strip searches conducted in 2021, TPS data confirms that there were "slightly higher" strip search rates for Black persons compared to the overall average. See TPS, *2020 Race & Identity-Based Data Collection Findings*, online: https://www.tps.ca/race-identity-based-data-collection/2020-rbdc-findings/.

[34] The OHRC defines racial profiling as any act or omission related to actual or claimed reasons of safety, security or public protection, by an organization or individual in a position of authority, that results in greater scrutiny, lesser scrutiny or other negative treatment based on race, colour, ethnic origin, ancestry, religion, place of origin or related stereotypes.

[35] OHRC, "Letter to Minister Orazietti regarding Street Checks Regulation" (10 August 2016), online:

https://www.ohrc.on.ca/en/news_centre/letter-minister-orazietti-regarding-street-checks-regulation.

[36] See Collection of Identifying Information in Certain Circumstances – Prohibition and Duties, O Reg 58/16, s 9; TPSB, Policy on Regulated Interaction with the Community and the Collection of Identifying Information (17 November 2016) at ss 13–21, online: https://www.tpsb.ca/policies-by-laws/board-policies/178-regulated-interaction-with-the-community-and-the-collection-of-identifying-information; TPS, Procedure 04-14 Regulated Interactions (3 January 2020) at 3, online: https://www.tps.ca/media/filer_public/2e/19/2e194193-4e37-44d5-b151-1432715dcb3c/5060f77e-187d-428c-b753-12145560bb50.pdf.

[37] The Honourable Michael H. Tulloch, *Report of the Independent Street Checks Review* (Ontario: Queen's Printer for Ontario, 2018) see Recommendations 8.12 and 8.13 at 230, online (pdf): https://opcc.bc.ca/wp-content/uploads/2019/06/StreetChecks.pdf.

[38] TPSB, Policy on Regulated Interaction with the Community and the Collection of Identifying Information (17 November 2016), online: https://www.tpsb.ca/policies-by-laws/board-policies/178-regulated-interaction-with-the-community-and-the-collection-of-identifying-information.

[39] TPSB, "Minutes of Public Meeting: March 26, 2019" (26 March 2019), Report from Audrey Campbell, Thea Herman (retired judge) & Chair Andry Pringle regarding "Regulated Interactions Review Panel: Review of Chief's Reports – Access to Historical Contact Data, Third Quarter 2018 (July – September) & Fourth Quarter 2018 (October – December)" (14 March 2019) at 50, online (pdf): https://tpsb.ca/jdownloads-categories/send/54-2019/610-march-26.

[40] TPSB, "Minutes of Public Meeting: March 26, 2019" (26 March 2019), Report from Audrey Campbell, Thea Herman (retired judge) & Chair Andry Pringle regarding "Regulated Interactions Review Panel: Review of Chief's Reports – Access to Historical Contact Data, Third Quarter 2018 (July – September) & Fourth Quarter 2018 (October – December)" (14 March 2019) at 50, online (pdf): https://tpsb.ca/jdownloads-categories/send/54-2019/610-march-26.

[41] TPSB, "Minutes of Public Meeting: March 26, 2019" (26 March 2019), Report from Audrey Campbell, Thea Herman (retired judge) & Chair Andry Pringle regarding "Regulated Interactions Review Panel: Review of Chief's Reports – Access to Historical Contact Data, Third Quarter 2018 (July – September) & Fourth Quarter 2018 (October – December)" (14 March 2019) at 50, online (pdf): https://tpsb.ca/jdownloads-categories/send/54-2019/610-march-26.

[42] TPSB, "Minutes of Public Meeting: March 26, 2019" (26 March 2019), Report from Audrey Campbell, Thea Herman (retired judge) & Chair Andry Pringle regarding "Regulated Interactions Review Panel: Review of Chief's Reports – Access to Historical Contact Data, Third Quarter 2018 (July – September) & Fourth Quarter 2018 (October – December)" (14 March 2019) at 50, online (pdf): https://tpsb.ca/jdownloads-categories/send/54-2019/610-march-26.

Chapter 6 - Arrests, charges, and artificial intelligence: gaps in policies, procedures

and practices

In the OHRC's second Inquiry report, *A Disparate Impact*, the expert analysis of TPS arrest, charge, and release data found that Black people are grossly overrepresented in police charges.

Despite being charged at a disproportionately higher rate, Black people were overrepresented in cases that resulted in withdrawn charges. Their cases were also less likely to result in a conviction compared to cases involving White people.

As set out in Chapter 3 of this report, the data and evidence reviewed since *A Disparate Impact* confirm that Black people across Toronto continue to be disproportionately arrested and charged.

To their credit, the TPSB and TPS have acknowledged this fact and taken some remedial measures. This chapter identifies important gaps in policies, procedures and practices, and makes recommendations regarding the proper and fair use of alternatives to charges and arrests for youths and adults.

This chapter also examines the use of artificial intelligence (AI) by the TPS in officer deployment and investigations that lead to charges and arrests. This new technology raises concerns regarding racial discrimination.

Disproportionate use of arrests and charges

Disproportionate arrests and charges of Black people have been the subject of multiple reports and studies for over 30 years.

In 1992, the Government of Ontario established The Commission on Systemic Racism in the Ontario Criminal Justice System (Commission) to examine how criminal justice practices, procedures and policies in Ontario reflect systemic racism.

The Commission released its report in 1995 and identified police overcharging as an issue facing Black and other racialized communities.[1] Its surveys and consultations revealed that many Ontarians did not feel the police fairly exercised their charging discretion in interactions with members of Black communities across Ontario.[2]

Community voices raised concerns that the police were quick to charge racialized persons when they would not charge White persons in similar circumstances, and that charges against racialized persons tended to be more severe or more numerous than warranted.[3] The 1995 Commission also received several reports of incidents that were provoked or exacerbated by harsh police treatment, and that resulted in charges against a racialized person.[4]

The Commission studied 217 cases in Toronto courts. It found:

> Proportionate to their number in court, Black defendants are significantly more likely than White or other racial minority accused to face at least one drug or weapons charge. The study also shows that these types of charges are significantly more likely to have arisen from proactive than reactive policing. According to these data, 77% of the cases resulting in at least one drug or weapons charge, but only 37% of other cases, stem from proactive police activity.[5]

This report confirms that the overcharging of Black people in Toronto continues. They are overrepresented in discretionary, lower-level charges with a low probability of conviction. For example:

- The charge rate for Black people was 3.9 times greater than for White people and 7.1 times greater than the rate for people from other racialized groups.
- Although they represented only 8.8% of Toronto's population in 2016 Census data, Black people represented 42.5% of people involved in obstruct justice charges and were 4.8 times more likely to be charged with obstruct justice offences than their representation in the general population would predict. By contrast, White people and people from other racialized groups were underrepresented.
- Black people represented 35.2% of people involved in "out-of-sight" driving charges (such as driving without valid insurance) – charges that arise only after a stop had already taken place, suggesting other motives for the stop.
- Black people represented 37.6% of people involved in cannabis charges, and were 4.3 times more likely to be charged with a cannabis possession offence despite conviction rates and many studies showing that Black people use cannabis at similar rates to

White people.

- Despite being charged at a disproportionately higher rate, Black people were overrepresented in cases that resulted in withdrawn charges. Their cases were also less likely to result in a conviction compared to cases involving White people.[6]

Recent steps by the TPSB and TPS

Recently the TPSB and TPS have taken positive steps toward better identifying and addressing systemic anti-Black racism in arrests and charges.

In June 2022, the TPS released an analysis of its race-based data on use of force and strip searches. This analysis looked at "enforcement actions," which included data on charges and arrests. Enforcement actions are incidents that result in "arrests, apprehensions, diversions, tickets or cautions for serious provincial offences, and includes those classified as suspects or subjects in occurrence records."[7] The data revealed disparities – specifically that Black people were 2.2 times more likely to be involved in enforcement actions than their population in the city. This analysis is helpful in identifying and explaining the disproportionate number of charges and arrests faced by members of Black communities.[8]

The TPS prepared a list of 38 Action Items arising from this analysis. The list included some actions aimed at encouraging officers to make use of their discretion in choosing diversion programs or alternatives to arrest and charge.

Alternatives to charges and arrest for youth

The TPSB and TPS have recognized the importance of pre-charge diversion programs for youth.

In 2015, TPSB Chair Alok Mukherjee stated that pre-charge diversion for youth, "would strengthen our model of community-based policing through partnership with community agencies providing diversion programs, contribute to increased trust between young people and the police, and result in potential financial savings by reducing court attendance by police officers."[9]

Then-Police Chief Mark Saunders stated the purpose of such programs is "not only to reduce the amount of young people entering the justice system, but to provide meaningful intervention at critical times of their lives."[10]

In 2017, with the support of the TPSB, the TPS launched the Toronto Youth Pre-Charge Diversion Program across all 17 divisions.[11] Several hundred youth take part in the program every year. However, the race of participants is not tracked.[12]

In 2020, the OHRC asked the TPSB if it considered expanding the program to include individuals over the age of 18. The TPSB responded:

> Given that the program is a cooperative effort with the Province, there may be requirements in place that limit expansion at this time. That being said, the Board would support an expansion of the pre-charge diversion program to include adults, if it was demonstrated to be effective and evaluated with a human rights lens prior to implementation … Depending on its capacity, [the TPSB's Anti-Racism Advisory Panel] could in the future evaluate the program with an anti-racism lens and make recommendations to the Board and the TPS.[13]

To the OHRC's knowledge, no such evaluation has taken place. It should.

Alternatives to charges and arrest for adults

The OHRC believes that the proper and fair use of alternatives is an important part of the solution to the overcharging and over-arrest of Black people. The TPS should be aware and make use of alternatives for adults, particularly those up to the age of 25 with no prior contact with the criminal justice system.

Police discretion relating to charges has been considered in two recent areas of legislative reform – administration of justice offence (AOJO) charges, and diversion measures or alternatives to charging.

Bill C-75 alternatives to AOJO charges

On March 29, 2018, the federal government introduced Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts.* Bill C-75 received Royal Assent on June 21, 2019.

Among other things, Bill C-75 introduces a diversionary regime for offences involving certain failures to comply with court orders (such as breaches of bail and failures to appear), where the breach did not cause property damage, economic loss, or physical or emotional harm to a victim. A conviction for these offences may pose a significant challenge for an accused seeking to secure bail.

In its overview of the legislation, the government specifically referenced a concern about the overrepresentation of Indigenous and vulnerable populations in the criminal justice system:

> [AOJOs] are offences committed against the integrity of the criminal justice system. The most common AOJOs include failing to comply with bail conditions (i.e., disobeying a curfew, drinking alcohol), failing to appear in court and breaches of probation (e.g., failing to report to a probation officer). Over the years, the number of individuals charged with AOJOs has been increasing, despite a consistent decrease in the volume and severity of crime in Canada: in 2014, police reported that the rate of persons charged with an AOJO increased by 8% since 2004 (compared to 20% decrease in rate of persons charged with other *Criminal Code* offences). AOJOs have contributed to an increase in pre-trial detention, and also to the overrepresentation of Indigenous persons and of individuals from vulnerable populations in the criminal justice system.[14]

Bill C-75 adds a new section 523.1 to the *Criminal Code*, creating an alternative procedure for handling particular AOJOs, i.e., when an individual has failed to comply with a summons, appearance notice, undertaking or release order, or has failed to attend court as required.

Under the new procedure, instead of charging someone for failing to comply with the requirements placed on them, police can issue a notice to appear before a judge or justice of the peace for a judicial referral hearing. Even if charges are laid, a judge or justice of the peace has the authority to consider various responses under the new procedure.

For a judicial referral hearing under section 523.1 to proceed, the failure in question must not have caused a victim physical or emotional harm, property damage, or economic loss.

Upon hearing the matter, the judge or justice may decide to:

- take no further action
- cancel any other summons, appearance notice, undertaking or release order for the accused and
- make a release order under section 515, or
- where detention of the accused in custody is justified under section 515(10), make an order accordingly and provide reasons for why the accused should be detained until they can be "dealt with according to law" (see section 515(5)), or
- remand the accused to custody to be photographed and have their fingerprints recorded pursuant to the *Identification of Criminals Act*.

If the judge or justice decides to do any of the above, any charges that were laid against the accused for the failure in question must be dismissed. The individual cannot be charged later for any failure that was the subject of the hearing.[15]

Bill C-5 alternatives to simple possession of drug charges

On December 7, 2021, the federal government introduced Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*. Bill C-5 received Royal Assent on November 17, 2022.

Among other things, the Act amends the *Controlled Drugs and Substances Act* (CDSA) and requires a peace officer or prosecutor to consider issuing a warning, referring an individual to a treatment program, or taking no further action, instead of proceeding with criminal charges for simple drug possession.

Following the enactment of Bill C-5, David Lametti, then-Minister of Justice and Attorney General of Canada, identified the elimination of systemic racism and discrimination as a primary incentive for the legislation. He said:

> Systemic racism is a reality for too many in Canada's criminal justice system. We have heard from the public, the courts, and criminal justice experts, and seen the evidence of the disproportionate representation of Indigenous people, Black persons, racialized Canadians, and members of marginalized communities, both as offenders and as victims.

...This new legislation allows for greater use of early diversion programs. This means that an individual can get the help they need to address underlying issues and avoid reoffending. This is particularly important in the context of the opioid crisis, which is having devastating effects on individuals, families, and communities across Canada. These evidence-based reforms address systemic racism and discrimination in our criminal justice system and keep communities safe by reducing the risk of re-offending. Our approach promotes fair and just outcomes for Indigenous people, Black persons, racialized Canadians, and members of marginalized community, while continuing to punish serious criminal offences and protecting public safety.[16]

For the OHRC's recommendations regarding alternatives to charges and arrests, see Recommendations 16 and 17.

TPSB policies and TPS procedures

Officers need better policy and procedural direction on whether to arrest, lay charges, or use alternatives.

Current TPS procedures offer minimal guidance. For example:

- The TPS Arrest procedure provides no guidance on when a person should be charged/arrested or offered an alternative such as diversion or a treatment program.[17]
- The TPS Routine Order on the "New Provincial Offences Warning Form" provides no guidance on when a warning should be given for a provincial offence, like trespassing, instead of a ticket or charge.[18]
- Although supervisors review charges and arrests for "thoroughness and completeness," they are not required to assess whether officers exercised their discretion appropriately (e.g., if there were reasonable grounds for the arrest, or if the officer engaged in racial profiling, racial discrimination, or anti-Black racism in charges or arrests).
- Although TPS's Human Rights and Race and Ethnocultural Equity policies prohibit discrimination, they also do not provide any guidance on how to identify, monitor or address it in charges and arrests.[19]

Current TPSB policies have similar significant gaps. The policies do not provide guidance to the Chief of Police on arrests and charges, and do not include any related oversight or accountability mechanisms.

For the OHRC's recommendations related to TPSB and TPS policies and procedures on charges and arrests, see Recommendations 19 and 20.

Officer training

Officers need better training to reduce overcharging of vulnerable and marginalized communities, including Black communities.

For example, the Criminal Offences Study Packet and the Introduction to Drug Investigation course do not provide guidance on when an officer should exercise their discretion to lay charges or pursue alternatives for obstructing a peace officer or possession of a controlled substance, respectively.[20]

As a starting point, all TPS officers should be trained on the following:

- proper exercise of discretion when considering charges
- racial disparities revealed in charges and arrests as presented in *A Disparate Impact*, *A Collective Impact* and this report
- alternatives to charging and arrest for youth, and
- alternatives to charging and arrest for adults, including for AOJO offences (Bill C-75) and drug possession offences (Bill C-5).

To achieve the goal of the legislative reforms (i.e., fewer charges and unbiased charging), the TPS should track how often alternatives are being used by their officers. It should also collect race-based data to determine if there are disparities in officer discretion in the use of alternatives to arrest.

The TPSB has taken note of the matter of officer training in alternatives. A footnote in its public consultation draft of the De-escalation and Appropriate Use of Force policy states:

An additional recommendation will be made to amend the Arrest chapter in the Adequacy Standards Compliance Policy to include a section directing the Chief to ensure Service Members are trained to use alternatives to arrest, including referral to

alternative response providers, community services and resources, youth diversion, or other available options, where appropriate."[21]

At time of writing, the policy has not been passed by the TPSB, and there have been no amendments to the Arrest Chapter in the Adequacy Standards Compliance Policy.

For the OHRC's recommendation regarding training in charges and alternatives to charges, see Recommendation 45.

Crown Counsel and pre-charge approval

To address overcharging and racial profiling, Ontario should amend the *Police Services Act* and the *Community Safety and Policing Act*, 2019, and make changes to the Crown Prosecution Manual to implement a Crown pre-charge screening process.

Pre-charge approval by the Crown (also often referred to as Crown pre-charge screening or pre-screening) provides an extra layer of monitoring that may reduce the disproportionate impact of charges and arrests on Black people.

The OHRC noted in its *Framework for change to address systemic racism in policing*:

> Our expert analysis of the data confirms that Black persons are proportionately overcharged by the TPS. For example, Black persons represented only 8.8% of the general population, but 28.8% of arrests involving two to five charges, 33.8% of arrests involving six to nine charges, and 38.9% of arrests involving 10 or more charges. Notably, the data indicate that many of these charges were withdrawn or dismissed.[22]

The following excerpt from the *Framework* summarizes OHRC's analysis of Crown pre-charge screening programs elsewhere in Canada.

> Crown pre-charge screening programs have been successfully implemented in British Columbia, Quebec and New Brunswick. New Brunswick uses a pre-charge screening or charge approval process that requires the Crown Prosecutor to review and approve charges before the police can lay them. This process also applies to provincial offences. Police officers investigate alleged crimes and then forward reports (including recommended charges) to Crown counsel, who decide whether to lay charges or institute alternative measures.

> Comparing the rate of withdrawn charges in provinces that use pre-charge screening with rates in Ontario highlights the potential benefits of reforming the current system.

> An OHRC analysis of adult criminal court data shows that provinces that use pre-charge screening have much lower rates of stayed[23] or withdrawn charges than Ontario.

> Specifically, 29% of charges were stayed or withdrawn in Quebec in 2018–19, while the figures were 37% in New Brunswick and 54% in B.C., equalling an average stayed/withdrawn rate of 40% among the three pre-charge screening provinces.

> In Ontario, by contrast, 68% of charges were stayed or withdrawn in 2018–19, which indicates broad patterns of over-charging that result in courts being flooded with cases that are very unlikely to result in convictions.

> A pre-charge screening pilot project, conducted at the RCMP detachments and three communities in Alberta, found that the screening process reduced the number of charges laid by 29% and court cases started by 21%. This data strongly suggests that reducing the overall number of charges will save scarce court resources, and minimize the disproportionate impact of over-charging on Black communities.

> It is noteworthy that being charged, in and of itself or in conjunction with pre-trial custody, can have serious negative consequences for people in terms of financial hardship (job loss, legal expenses, etc.), diminished employment prospects, interrupted education pathways and reputational harm. Provinces that have implemented pre-charge screening are better equipped to prevent people from entering the criminal justice system because of charges that lack merit, which can mitigate some of these negative outcomes.

> Examining Crown policy manuals in provinces with pre-charge screening confirms that these systems can support initiatives to address systemic discrimination in the criminal justice system. For example, in British Columbia, the Crown pre-charge screening process uses a two-part test to determine if charges should proceed. At the first stage, the evidentiary test considers whether there is a substantial likelihood of conviction.

If the first part of the test is satisfied, Crown counsel apply the public interest test. Factors that weigh in favour of not prosecuting an individual under the second stage include the over-representation of Indigenous persons as accused within the criminal justice system, and the role that bias, racism or systemic discrimination played in bringing the person into contact with the criminal justice system. Factors that weigh in favour of laying a charge include the over-representation of Indigenous women and girls as victims of violent offences.

Ontario's Crown Prosecution Manual includes a similar test. However, Crown Attorneys are not instructed to screen all cases before the charge is laid. Ontario Crown Attorneys are also not explicitly directed to consider the impact of bias, racism or systemic discrimination. Enabling Crown counsel to apply this equity lens to charges before Indigenous, Black and racialized persons are brought before the courts has the potential to reduce the over-representation of these groups in the criminal justice system.[24]

There is precedent for pre-charge advice from the Crown in Toronto. In 2017, the Province launched a program embedding Crown attorneys in the TPS 51 Division and Ottawa Police Service to provide police with real-time advice on bail decisions. The Crown attorneys also worked with police and community-based health and social service agencies on alternatives to criminal charges for vulnerable, low-risk accused who could be diverted out of the criminal justice system.[25]

The TPS assessed the program and determined that the embedded Crown attorneys were able to make several important contributions, including:

- advice on pre-charge diversion screening for people with mental health and addiction issues
- advice related to sufficiency of charges/charge type
- pre-charge advice about both routine investigations and larger projects/anticipated takedowns, and
- liaison with the 51 Division multi-agency community service providers team meetings (FOCUS situation table).[26]

A survey was also sent to all members of 51 Division about their views of the project. Of the 23 responses received, 65% stated that the project prevented them from laying a charge that, absent embedded Crown input, they would have laid – thereby diverting individuals to mental health court or a mental health program.[27] The surveyed officers all recommended that the project continue.[28] Then-Interim Chief Ramer also agreed that pre-charge advice from the embedded Crowns at 51 Division was valuable.[29]

However, one shortcoming of the program was that race and related outcomes were not tracked.

The Crown pre-charge advice pilot provides further evidence that Crown involvement at the charging stage is not only helpful and practical, but also critical in reducing unnecessary and harmful overcharging practices. As the Board overseeing the largest municipal police service in Canada, the TPSB should take a leadership role by urging the provincial government to implement Crown pre-charge approval before laying a criminal charge.

For the OHRC's recommendations on Crown pre-charge approval, see Recommendations 88, 89, and 90.

TPS equity audits

TPS supervisors review every arrest and charge for "thoroughness and completeness." Information reviewed includes: the record of arrest, the synopsis of the allegations, the charge that was laid, the witness list and statements, and the exhibit list.[30] It may also include the officer's memo book notes. The supervisor signs off on the record of arrest and synopsis.[31]

However, TPS supervisors are *not* required to assess if the arrest or charge was free of racial profiling or racial discrimination. In an interview with the OHRC, a TPS Deputy Chief of Police advised that such a review would only take place if concerns were raised by an officer or a witness.[32] Ideally, while reviewing a charge for thoroughness and completeness, a supervisor should also review each charge for potential racial profiling and/or racial discrimination.

Supervisory officers should be required, at a minimum, to conduct equity audits of charges for provincial offences, administration of justice charges, as well as criminal charges at the unit level once every three months. These audits should be conducted with an anti-discrimination lens and should be focused on ensuring that overrepresentation of Black people or any other marginalized group is addressed.

For OHRC's recommendation regarding Supervisory equity auditing of charges, see Recommendation 18.

TPS and the use of artificial intelligence

In recent years, law enforcement organizations, including the TPS, have increasingly used artificial intelligence (AI) to identify individuals, collect and analyze data, and help make decisions, including where police should be deployed and on whom they should focus their attention.

In January 2020, the TPS denied using a controversial AI facial recognition software called Clearview AI. Subsequently, in February 2020, the TPS acknowledged that some of its officers had indeed been using Clearview AI since October 2019, and as soon as then-Chief Saunders was made aware of the software's usage by TPS officers, he issued a directive to immediately stop using Clearview AI.[xxxiii] Overall, 89 investigations used the technology and, according to the TPS, 30% of those investigations were "substantiated and/or advanced" using the technology.[34]

Using AI with body-worn cameras and facial recognition technology

As the Citizenlab noted in its report *To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada*, there are several issues with the use of AI and facial recognition technology in policing, including:

- privacy concerns related to the capture and retention of photographic data by law enforcement

- unreliable facial recognition technology – particularly in the case of racialized people and women

- data-sharing between the private sector and law enforcement.[35]

According to the TPSB's 2020 policy on body-worn cameras:

> Recordings from body-worn cameras may not be used in combination with facial-recognition technology, video analytics software, voice recognition software, or to generate a searchable database of images of individuals who have interacted with Service Members, with the exception of comparing images that are directly related to an investigation to a "mug shot" database in a manner approved by the Board.[36]

> However, the OHRC remains concerned about the use of AI in conjunction with facial recognition and body-worn cameras[37] considering the over-surveillance and overcharging of Black communities, and TPS's past use of facial recognition technology.

Several jurisdictions have suspended the use of facial recognition by law enforcement. In 2020, California implemented a three-year ban on police using facial recognition technology on footage from body-worn cameras.[38] Oakland,[39] San Francisco[40] and Somerville[41] enacted even broader bans on the use of this technology by the municipalities.

Use of AI in police deployment decisions

The TPS should make sure that officer deployment and AI do not result in racial discrimination against Black people in charges. In recent years across Canada, law enforcement efforts to prevent crime have begun to employ techniques of predictive policing that involve the use of crime data to determine future probabilities of criminal occurrences.

In theory, predictive policing has the capacity to lessen longstanding patterns of biased police deployment in Black, other racialized, and Indigenous communities. In practice, however, predictive policing has been found to reinforce existing biases.

Police services are entitled to assign their officers to different neighbourhoods to carry out their duties. As a policing strategy, police may target enforcement to certain neighbourhoods where particular crimes occur at higher-than-average levels. In some cases, such neighbourhoods may be low-income areas with relatively high proportions of Indigenous and/or racialized residents.

Allocating a high number of police to racialized neighbourhoods raises human rights concerns when:

- this allocation is disproportionate (i.e., heavy-handed) in relation to the level of crime, type of crime, or form of victimization police seek to address, and

- residents experience greater degrees of intrusive police scrutiny as a result.

Also, selectively targeting communities based on racial bias, or attempting to prevent crime in racialized neighbourhoods through aggressive or unnecessarily broad approaches or pretext stops, will likely expose Indigenous or racialized people to higher levels of surveillance, stops and arrests, mostly for minor offences occurring in those neighbourhoods. These deployment practices can lead to Indigenous and racialized people being over-policed and may violate the *Ontario Human Rights Code*.[42]

Similarly, there is a danger in using AI tools or approaches that are not accurate or are based on racially biased data or algorithms. They may overestimate the risk posed by Indigenous, Black or other racialized people, and compound existing disparities in criminal justice outcomes.[43]

Need for a province-wide approach to AI based on human rights principles

The use of AI technology in policing, locally and province-wide, should be informed by human rights principles.

In September 2021, the OHRC made submissions to the TPSB on its draft Policy on Use of Artificial Intelligence Technologies. The OHRC did not, and does not in this report, call for a complete ban on AI or facial recognition technology. Rather, the OHRC promotes the human rights principles of equity, privacy, transparency, and accountability to make sure that AI technology does not create or perpetuate systemic discrimination.

To make broader change and ensure consistency, the OHRC and the Information and Privacy Commissioner (IPC) recommended that the TPSB urge the provincial government to implement a legislative and regulatory framework informed by the OHRC and IPC's submissions and recommendations.[44]

The OHRC and IPC also called for the TPS to conduct privacy and human rights assessments in consultation with experts before procuring and using relevant AI technologies or algorithms.[45]

In February 2002, the TPSB approved the Policy on Use of Artificial Intelligence Technologies. The policy addresses transparency and accountability issues in the use of AI technology. It also sets out risk reporting requirements related to any current or future AI technologies.

However, more is required to ensure that the TPS's use of AI does not result in further racial profiling and discrimination.

For the OHRC's policy guidance on artificial intelligence, see Recommendations 20, 21, and 22.

Chapter 6 Endnotes

[1] Margaret Gittens et al, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer for Ontario, 1995) at 179–189.

[2] Margaret Gittens et al, Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) at 182.

[3] Margaret Gittens et al, Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) at 183.

[4] Margaret Gittens et al, Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) at 183.

[5] Margaret Gittens et al, Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) at 185.

[6] OHRC, A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (Toronto: OHRC, 2020), online (pdf): https://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20-%20TPS%20inquiry%20%28updated%20January%202023%29.pdf.

[7] TPS, "Use of Force: Measurement & Outcomes," video transcript: https://www.tps.ca/media/filer_public/b9/f4/b9f492b5-8e11-450a-af6e-deae2658010b/1ec05b46-427f-41eb-8697-cd12e95dad0b.pdf.

[8] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (Toronto: Toronto Police Service, 2022) at 10, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

[9] TPSB, "Draft Minutes of Public Meeting: June 18, 2015" (18 June 2015), Report from Chair Dr. Alok Mukherjee regarding "Youth Pre-charge Diversion Program" (2 June 2015) at 31, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=180&catid=7&m=0.

[10] TPSB, "Draft Minutes of Public Meeting: December 17, 2015" (17 December 2015), Report from Chief Mark Saunders regarding "Youth Pre-Charge Diversion Program" (13 November 2015) at 106, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=186&catid=7&m=0.

[11] Muriel Draaisma, "'We know this is better for kids': Toronto police launch program to keep youth out of court system," CBC News (20 June 2017), online: www.cbc.ca/news/canada/toronto/youth-precharge-diversion-program-1.4169394.

[12] OHRC interview with Deputy Chief Peter Yuen (Priority Response Command) (12 March 2020).

[13] Responses of the TPSB to written questions at 32–33, 113–117 (22 January 2020), asked under s 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19.

[14] Bill C-75, *An Act to amend the Criminal Code*, the *Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019, clauses 212, 234, online: https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/royal-assent; Government of Canada, "Legislative Background: *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, as enacted (Bill C-75 in the 42nd Parliament)" (26 August 2022), online: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html.

[15] Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, 1st Sess, 42nd Parl, 2019, clauses 212, 234, online: https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/royal-assent; Government of Canada, "Legislative Background: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as enacted (Bill C-75 in the 42nd Parliament)" (26 August 2022), online: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html.

[16] Department of Justice Canada, "Statement by Minister Lametti on Royal Assent of legislation that addresses systemic racism and discrimination in the criminal justice system," *Cision Canada* (18 November 2022), online: https://www.newswire.ca/news-releases/statement-by-minister-lametti-on-royal-assent-of-legislation-that-addresses-systemic-racism-and-discrimination-in-the-criminal-justice-system-837945376.html.

[17] TPS, Procedure 01-01 Arrest (2 February 2021), online (pdf): https://www.tps.ca/media/filer_public/9b/d2/9bd29690-bfcf-42df-9480-7ba0d0ec6068/08da6409-baec-4b98-afe5-458c1e8d01b4.pdf.

[18] TPSB, TPS Routine Order from the Office of the Chief – New Provincial Offences Warning Form (July 2013).

[19] TPSB, Race and Ethnocultural Equity Policy (15 November 2010), online: https://www.tpsb.ca/policies-by-laws/board-policies/176-race-and-ethnocultural-equity-policy.

[20] Toronto Police College/Service, TPS Study Package for General Investigators Course – Criminal Offences (amended April 2014); Toronto Police College/Service, TPS Introduction to Drug Investigations – Course Training Standard (undated).

[21] TPSB, "Consultation Draft: De-escalation and Appropriate Use of Force Policy" (accessed 30 July 2023) at 4, online (pdf): https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=756&catid=68&m=0.

[22] OHRC, *Framework for change to address systemic racism in policing* (July, 2021) https://www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing#:~:text=The%20OHRC%20calls%20on%20Ontario,from%20policing%20across%20the%20province

[23] Staying a charge is when a charge and criminal proceedings attached to it are halted by a judge or Crown. See *Criminal Code*, RSC 1985, c C-46, s 579(1).

[24] OHRC, *Framework for change to address systemic racism in policing* (July, 2021) https://www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing#:~:text=The%20OHRC%20calls%20on%20Ontario,from%20policing%20across%20the%20province.

[25] Government of Ontario, "Progress on Ontario's Plan for Faster, Fairer Criminal Justice" (30 October 2017), online: file:///C:/Users/scormier/AppData/Roaming/Microsoft/Word/news.ontario.ca/en/backgrounder/46817/progress-on-ontarios-plan-for-faster-fairer-criminal-justicehttps://news.ontario.ca/en/backgrounder/46817/progress-on-ontarios-plan-for-faster-fairer-criminal-justice.

[26] TPSB, TPS Internal Correspondence from Detective Sergeant Richmond to Superintendent Riviere of 51 Division – Project Assessment – 51 Division Embedded Crown (January 2018).

[27] TPSB, TPS Internal Correspondence from Detective Sergeant Richmond to Superintendent Riviere of 51 Division – Project Assessment – 51 Division Embedded Crown (January 2018).

[28] TPSB, TPS Internal Correspondence from Detective Sergeant Richmond to Superintendent Riviere of 51 Division – Project Assessment – 51 Division Embedded Crown (January 2018).

[29] OHRC interview with then-Interim Chief James Ramer (26 October 2022).

[30] First-level supervisors are sergeants; OHRC interview with Deputy Chief Peter Yuen (Priority Response Command), (12 March 2020).

[31] OHRC interview with Deputy Chief Peter Yuen (Priority Response Command), (12 March 2020).

[32] OHRC interview with Deputy Chief Peter Yuen (Priority Response Command), (12 March 2020).

[33] "Toronto police admit using secretive facial recognition technology Clearview AI", *CBC* (14 February 2020), online: https://www.cbc.ca/news/canada/toronto/toronto-police-clearview-ai-1.5462785.

[34] Detective Operations of TPS, "Clearview AI: Usage, Review & Analysis" (27 March 2020), online (pdf): https://s3.documentcloud.org/documents/21169254/tps-clearview-ai-usage-review-and-analysis-report-1.pdf.

[35] Kate Robertson, Cynthia Khoo and Yolanda Song, *To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada* (Toronto: Citizen Lab and International Human Rights Program, University of Toronto, 2020) at 91–92, online (pdf): https://citizenlab.ca/wp-content/uploads/2020/09/To-Surveil-and-Predict.pdf.

[36] TPSB, Policy on Body Worn Cameras (24 November 2020), online: https://www.tpsb.ca/policies-by-laws/board-policies/154-body-worn-cameras.

[37] See the Accountability Chapter 9 of this report; OHRC, "Letter to Toronto Police Service and Toronto Police Services Board on its policy and procedure on body-worn cameras" (28 October 2020), online: https://www.ohrc.on.ca/en/news_centre/letter-toronto-police-service-and-toronto-police-services-board-its-policy-and-procedure-body-worn.

[38] U.S. AB 1215, *An act to add and repeal Section 832.19 of the Penal Code, relating to law enforcement*, 2019-2020, Reg Sess, Cal, 2019, online: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1215.

[39] City of Oakland, Ordinance No 13635, § 2, 1-12-2021; and Ordinance No 13563, § 3, 9-17-2019. Prohibition on City's acquisition and/or use of Biometric Surveillance Technology and Predictive Policing Technology at 9.64.045, online: https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT9PUPEMOWE_CH9.64REACUSSUTE_9.64.045PRACUSBISUTEPRPOTE.

[40] City of San Francisco, Ordinance 107-19, s 19-B, *Acquisition of Surveillance Technology* (15 July 2019), online: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-47320.

[41] City of Sommerville, Ordinance V2-1, *Banning the usage of facial recognition technology in Somerville* (27 June 2019), online: http://somervillecityma.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=20991.

[42] OHRC, "Policy on eliminating racial profiling in law enforcement" (2019) at 4.2.1. Unwarranted deployment, online: www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement.

[43] OHRC, "Policy on eliminating racial profiling in law enforcement" (2019) at 4.2.6. Artificial intelligence, online: www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement; "Toronto police admit using secretive facial recognition technology Clearview AI," CBC News (13 February 2020), online: https://www.cbc.ca/news/canada/toronto/toronto-police-clearview-ai-1.5462785.

[44] IPC, "Additional comments and recommendations on the OHRC's draft recommendations to eliminate racial profiling and racial discrimination of Black persons by the Toronto Police Service" (10 November 2022) at 2–3. For further information on IPC submissions and guidance relating to AI and facial recognition technology in policing, see Office of the Privacy Commissioner of Canada, "Privacy regulators call for legal framework limiting police use of facial recognition technology" (2 May 2022), online: https://www.priv.gc.ca/en/opc-news/news-and-announcements/2022/nr-c_220502/; Office of the Privacy Commissioner of Canada, "Privacy guidance on facial recognition for police agencies" (May 2022), online: https://www.priv.gc.ca/en/privacy-topics/surveillance/police-and-public-safety/gd_fr_202205/.

[45] Information and Privacy Commissioner, "Additional comments and recommendations on the OHRC's draft recommendations to eliminate racial profiling and racial discrimination of Black persons by the Toronto Police Service" (10 November 2022) at 2–3.

Chapter 7 - Use of force: gaps in policies and procedures

For decades, Black communities, mental health advocates, the OHRC and others have been calling for action to reduce discriminatory, excessive, and inappropriate use of force.

Multiple reports and coroner's juries have recognized the disproportionate use of force employed by the TPS against marginalized persons – Black communities in particular. The following reports offer important recommendations to address this problem:

- *Report of the Race Relations and Policing Task Force* (Clare Lewis, 1989)[1]
- *Report of the Advisor on Race Relations to the Premier of Ontario* (Stephen Lewis, 1992)[2]
- *The Review of the Roots of Youth Violence* (Roy McMurtry and Alvin Curling, 2008)[3]
- independent review of the use of lethal force by the TPS (Honourable Frank Iacobucci, 2014)[4]
- the jury in the inquest into the deaths of Reyal Jardine-Douglas, Sylvia Klibingaitis, Michael Eligon (2014)[5]
- the jury in the inquest into the death of Andrew Loku (2018).[6]

These reports and juries called for, among other things, substantial changes to TPS policies and procedures regarding the use of force, changes to the use-of-force model, a greater focus on de-escalation, and improvements in how police officers are trained and monitored concerning the use of force.

Those calls for change have done little to date. The data examined by the OHRC shows that Black people remain disproportionately represented in all instances of use of force by the TPS, including cases that result in death or serious physical injury, and in cases of lower-level use of force.

It is critical that the TPS and TPSB move urgently to implement all recommendations from previous reports and coroner's juries that addressed police use of force and its impact on Black communities.

The intersection between race and mental health is of particular concern for Black communities because of the impact police use-of-force practices can have on the mental health of community members. These practices are exacerbated for those Black persons already living with mental health or addiction issues.[7] The delay in implementing reforms on use of force has resulted in preventable harm and racial discrimination.

This chapter will analyze use-of-force data, review recent and proposed policy and procedural changes by the TPSB and TPS, and make recommendations to strengthen efforts to eliminate discriminatory use of force. It will begin with a review of the findings on use of force in from the OHRC's previous interim inquiry reports.

Death and serious injury data (SIU Investigations)

Despite making up only 8.8% of Toronto's population, Black people were overrepresented in:

- SIU use-of-force cases (28.8%)
- police shootings (36%)

- use-of-force cases that resulted in civilian death (61.5%)
- police shooting deaths (70%).

Between 2013 and 2017, a Black person in Toronto was nearly 20 times more likely than a White person to be involved in a fatal shooting by the TPS.

Black men comprise 4% of Toronto's population, yet were complainants in 25% of SIU cases alleging sexual assault by TPS officers.

The Inquiry's experts conducted further analysis to assess whether other commonly cited factors could explain the significant racial disparities in the data. In addition to neighbourhood crime rates, they identified several factors that arguably could be at play when an officer chooses to use force. These included civilian characteristics (e.g., age, gender) and situational factors (e.g., community setting, civilian behaviour, mental illness, civilian impairment, the presence of a weapon).

Our experts found that these factors could not explain the overwhelming overrepresentation of Black people in SIU investigations and shooting deaths.

They analyzed other factors that some might argue have an influence on the use of force, including the person's behaviour toward the police at the time of the incident, and if they had a criminal history. However, the experts found that these factors did not account for the overrepresentation of Black people in use-of-force data.

This analysis debunks several commonly held, seemingly neutral or non-discriminatory explanations for the overrepresentation of Black people in these statistics.

Lower-level use of force

SIU cases account for only a small percentage of police use-of-force incidents. Many serious forms of force do not meet the SIU's threshold, which focuses on the nature of a person's physical injury (e.g., broken bones meet the threshold, but severe bruises or lacerations may not). Lower-level use-of-force incidents can still have significant adverse physical and emotional impacts on the person subjected to that force.

Our experts found that between 2016 and 2017, Black people were grossly overrepresented in lower-level use-of-force incidents, even more than in incidents that resulted in an SIU investigation.

Specifically, Black people were involved in 38.9% of the cases included in the lower-level use-of-force dataset.

Black males were particularly overrepresented, accounting for 34.5% of all lower-level use-of-force cases. Although Black females were underrepresented in the dataset, the Black female rate was still 3.6 times greater than the rate for White females, and 25 times greater than the rate for women from other racialized groups.

Summary of overrepresentation in use-of-force categories

Although they represent only 8.8% of Toronto's population, Black people were grossly overrepresented in almost all use-of-force categories:

- 32.2% of cases involving a police firearm
- 36% of cases involving police use of pepper spray
- 36.7% of cases involving police strikes
- 41.1% of cases involving police grounding (i.e., bringing a person to the ground) /other force
- 45.5% of cases involving police Taser use
- 57.1% of cases involving a police dog.

As well, compared to their representation in the general population, Black people were:

- 2.7 times more likely to suffer from broken bones from a police use-of-force incident
- 3.8 times more likely to suffer an injury from pepper spray
- 4.2 times more likely to suffer abrasions or scratches
- 4.4 times more likely to suffer a head injury
- 4.6 times more likely to experience body pain or soft tissue damage
- 4.7 times more likely to experience cuts or lacerations
- 4.7 times more likely to experience a Taser-related injury

- 6.6 times more likely to experience chest pains as the result of a police use-of-force incident.

Several commonly held beliefs that might provide a non-discriminatory explanation were considered, such as the belief that this happens because Black people live in high-crime patrol zones. However, even accounting for factors such as low-crime and high-crime patrol zones, average income, and the percentage of single-mother households, the experts found that Black people were still grossly overrepresented in both serious and lower-level use-of-force incidents.

Even when accounting for these alternative factors, there were significant disparities in the relative risk that Black people will experience serious and lower-level police use of force relative to White people.

For instance, relative to their representation in the general population in a patrol zone, the odds that a Black person would experience force were 4.9 times greater than the odds of a White person. The odds that people belonging to other racialized groups would experience force were 0.6 times (or 40%) less than the odds for White people.

Although patrol zone, violent crime rate, and median household income may be predictors of the likelihood of experiencing police use of force, these indicators cannot explain why Black people were overrepresented. The experts concluded that being Black is a strong predictor of police use of force, accounting for both crime rate and median household income.

The OHRC urges the TPS to review and adopt the multiple recommendations made in previous reports, and by juries' decisions. This Inquiry recommends additional changes – presented in the following pages – that the TPS should implement immediately.

Recent procedure and policy changes by the TPS and TPSB

The OHRC recognizes that the TPS and TPSB have recently taken positive steps in their procedures and policies regarding the use of force that may address some of the community's concern about the disparate application of force. Recent shifts are summarized below.

TPS 15-01 Incident Response (Use of Force/De-escalation) procedure

In June 2022, the TPS issued Procedure 15-01 Incident Response (Use of Force/De-escalation).[8] Key changes in the Incident Response procedure, and amendments made to it in 2021, include the emphasis on de-escalation, the inclusion of a duty to intervene, and expanded data collection requirements. In addition, upon receipt of a use-of-force report, supervisory officers are required to ensure that the reports are accurate, and review all body-worn camera and in-car camera footage from the officer involved.

De-escalation

De-escalation is defined by the TPS as verbal and non-verbal strategies intended to reduce the intensity of a conflict so as to gain compliance without the application of force, or if force is necessary, reducing the amount of force used.

The Incident Response procedure identifies de-escalation and communication as core tools that must be considered continuously and utilized, where possible, even after use of force has occurred. The rationale section of the current procedure also notes that disengagement is among the de-escalation tactics that should be considered in use-of-force situations.

In addition, officers are now required to intervene and take reasonable steps to prevent the behaviour from continuing if they have clear reason to believe that another officer is engaging in misconduct – including, but not limited to, assault or physical abuse (i.e., excessive use of force) involving any person.

The intervening officer must record details of the incident and substance of the officer's complaint, including dates, times, locations, other persons present and other relevant information, including the presence of video and/or other evidence. Officers are required to report the incident forthwith to their immediate supervisor or another supervisor. If they fail to do so, they may be disciplined for misconduct.

Changes proposed in the draft Incident Response procedure

The draft Incident Response procedure provides further guidance on the steps officers can take to intervene. For example, the duty to intervene may include using verbal instructions or reasonable soft or hard physical control that is proportional to the perceived risk, with the goal of "preventing further harm to the members of the public."[9]

The draft states that officers will not be retaliated against for intervening, and that they can make a confidential report to a third party if they intervene against a superior officer. Furthermore, where an incident of excessive force is under investigation, a witness officer who did not intervene will be investigated to determine whether they should be subject to training or discipline.

The draft sets out disciplinary measures that may flow from an officer's failure to intervene. For example, "failure to report the misconduct of another member, may constitute misconduct and may be subject to discipline as outlined in Service Procedure." To strengthen the duty to intervene, the OHRC recommends that the TPS take immediate steps to enact this provision.

The TPS may make further amendments to the Incident Response procedure. A draft update has been posted on the TPSB's website, which could replace the current version.

Reporting requirements

The Incident Response procedure requires that the TPS collect, analyze, and publicly report data on the race of individuals against whom officers use force.[10] This requirement is in accordance with O. Reg. 267/18 of the *Anti-Racism Act*, 2017, O. Reg. 926/90 *Equipment and Use of Force* of the *Police Services Act* and the TPSB's policy on Race-based Data Collection, Analysis and Public Reporting. In accordance with the TPSB's procedure and O. Reg. 267, officers shall record the perceived race of the individual(s) about whom the use-of-force report is completed.

In accordance with O. Reg. 926, use-of-force reports must be submitted to the Chief of Police when an officer:

- draws a handgun in the presence of a member of the public;
- points a firearm at a person;
- discharges a firearm;
- uses a weapon on another person;
- draws and displays a conducted energy weapon to a person with the intention of achieving compliance;
- points a conducted energy weapon at a person;
- discharges a conducted energy weapon; or
- uses force on another person, including through the use of a horse or a dog, that results in an injury requiring the services of a physician, nurse or paramedic and the member is aware that the injury required such services before the member goes off-duty. (s.14.5(1))

O. Reg. 926/90 also states that "The chief of police shall submit an annual report to the police services board … analyzing the data from the reports submitted." (s. 14.8(6))[11]

The Incident Response procedure does not require officers to collect race data on lower-level use-of-force incidents. The draft procedure also fails to include this requirement. This gap appears to be addressed by the TPSB's draft De-escalation and Appropriate Use of Force policy.

TPSB Draft De-escalation and Appropriate Use of Force policy

The TPSB has also posted a draft De-escalation and Appropriate Use of Force policy. It has some important changes.

In February 2023, a representative of the TPSB stated that the proposed updates to TPSB's use-of-force policy were made in response to recommendations from the 2020 *Police Reform in Toronto* report. More specifically, the representative noted that the *Police Reform* Report recommended:

> …the Executive Director, in consultation with the Chief of Police, to review the Board's Use of Force Policy, consult with internal and external experts, and propose to the Board by November 2020, amendments to the Policy that will align it with best practices to reduce death and injuries[.][12]

As part of the policy development process, the Board conducted research and internal consultations, and engaged stakeholders, including the OHRC.

The stated broad goals of the draft policy are to:

- Prioritize de-escalation in all appropriate circumstances

- Produce positive outcomes arising from interactions between members of the Service [i.e., TPS officers] and the public, and

- Minimize, to the greatest extent possible, the degree of force used by Service members, as well as injury or death where a Service member is justified in using force, while ensuring the safety of the community and Service members.

The stated purposes of the draft De-escalation and Appropriate Use of Force policy include:

- eliminating the use of excessive force

- ensuring that the Service's training, procedures, and practice prioritize a Service [m]ember pursuing de-escalation options to the greatest extent possible without endangering officer safety

- ensuring that Service [m]embers employ de-escalation and communication tactics in all appropriate circumstances by continuously assessing incidents as they unfold for opportunities to effectively de-escalate a conflict without force or with a lesser degree of force, including after a [m]ember has begun the lawful use of force

- ensuring that any force option will be used against a member of the public only where it is necessary, without bias, and in a manner proportionate to the circumstances to effectively protect public safety

- ensuring that where Service [m]embers are present during an interaction where another member is using inappropriate or excessive use of force, they will intervene to stop it, and report it to their supervisors.

Reporting requirements

The TPSB's current use-of-force reporting requirements were consistent with provincial requirements until January 1, 2023. On this date, the Province implemented changes to O. Reg. 926 that expanded use-of-force reporting to include instances where an officer uses force on a person through a horse or dog, points a firearm at a person, or displays a conducted energy weapon (CEW) with the intent to achieve compliance.[13] These are not reflected in the current policy. However, the TPSB's new draft De-escalation and Appropriate Use of Force policy includes these changes and goes a step further by requiring officers to collect race-based data on a wider range of use-of-force incidents.

For example, the TPSB's draft policy uses a definition of "physical force" that captures a broader range of incidents than the reporting requirements set out in the Equipment and Use of Force regulation. The TPSB's policy defines physical force as:

> … techniques intended to control or stop a subject's behaviour, which exceed mere physical contact (e.g., handcuffing a resisting individual, punches, armlocks, tackles, oleoresin capsicum [OC] aerosol spray, baton, firearms). Physical force includes drawing a firearm or displaying a Conducted Energy Weapon [CEW], whether or not the firearm or [CEW] were discharged at the subject …[14]

In contrast, the Equipment and Use of Force regulation requires officers to complete a use-of-force report when an officer, "uses force on another person, including through the use of a horse or a dog, that results in an injury requiring the services of a physician, nurse or paramedic[.]"[15]

The definition proposed by the TPSB captures the lower-level use-of-force incidents examined during this Inquiry. According to the draft policy, the Chief of Police will create procedures to ensure officers report on physical force incidents, and provide the Board with an annual report on physical force incidents that includes the total number of reports that year, a breakdown of the reasons for the use of physical force, the perceived race of the members of the public involved, and the number of persons in crisis involved in these incidents.[16]

Progress and gaps in draft policy

The OHRC is encouraged by the TPSB's new draft policy. By placing a greater emphasis on de-escalation, it potentially reduces the number of use-of-force encounters. It can also help the TPS build trust with Black and other communities.

The draft policy also makes progress towards addressing decades-long concerns from Black, Indigenous, and other vulnerable communities by:

- placing the highest value on protecting the life and the safety of the public

- underscoring the importance of ensuring that TPS members employ de-escalation and communication tactics in all appropriate circumstances, and continuously assess incidents as they unfold

- prohibiting the use of excessive force, prohibiting chokeholds, carotid holds,[17] or any other techniques intended or likely to restrict breathing capacity unless no other reasonable alternatives exist to prevent grievous bodily harm or death of police officers or a member of the public

- requiring the TPSB to publish on its website anonymized data on all use-of-force incidents reported by TPS members, and

- giving supervisors a more robust role in identifying and responding to inappropriate use of force, missed opportunities for de-escalation, and/or discriminatory conduct.

These are important policy shifts that respond to community concerns and some recommendations advanced by the OHRC in its racial profiling policy, and the best practices shared with TPS throughout the TPS Inquiry.

The OHRC hopes that when implemented with additional reforms recommended by the OHRC, the revised policy will reduce use-of-force rates and respond to unique concerns from racialized communities, persons in crisis, and other *Code*-protected groups.

Scope of incidents subject to use-of-force reporting

There is more to be done to ensure that the draft policy and draft procedure work in harmony to reflect leading practices, reduce disparities in use of force, and achieve the TPSB's vision of establishing bias-free policing. The policy should include the following:

- Expand use-of-force reporting to lower-level uses of force.

- Expand use-of-force reporting to include the use of handcuffs (mechanical restraints) to obtain subject compliance that occurs outside of an arrest, and the application of handcuffs to persons under 18.

- Clarify the steps the TPSB can take in response to data that establishes disparities between racialized groups.

- Investigate when a CEW is discharged.

- Direct that officers avoid using force when engaged with a youth.

- Provide clear guidance on circumstances where deadly force is prohibited.

- Use a comprehensive definition of use of force to guide use-of-force reporting.

Use-of-force incidents that must be reported are narrowly defined. They do not include the full context surrounding the use of force, or instances the public would consider use of force by the police.

The TPSB's draft policy on De-escalation and Appropriate Use of Force has the potential to improve race-based use-of-force data collection and analysis because it captures incidents where physical force is used. However, the OHRC is concerned that the definition of physical force proposed by the TPSB's draft policy, which captures some lower-level use-of-force incidents, is not reflected in TPS's draft Incident Response procedure.[18]

More importantly, the TPSB's draft policy has not been implemented at the time this report was drafted. This is concerning as the OHRC released findings about the disparate impact of lower-level use of force on Black communities in 2020.

Unfortunately, policies and procedures currently issued by the TPS and TPSB require use-of-force reports when an officer uses "physical force on another person that results in an injury requiring medical attention" among other criteria.[19] This approach ties the reporting requirement to the presence of a physical injury. As such, circumstances where TPS members use measurable force are not reportable if

they do not result in a physical injury. This method results in an underreporting of relevant use-of-force incidents, and will undermine efforts to address concerns in this area.

For example, the current reporting requirements would not capture uses of force that would attract public scrutiny, such as chokeholds. The TPSB's draft policy prohibits the use of chokeholds, or any other technique intended or likely to prevent respiration. Yet, the prohibition is not absolute.

These holds are prohibited unless "no other reasonable alternatives exist to prevent grievous bodily harm or death." Based on current requirements, an officer's use of a chokehold would not be subject to reporting if it did not result in injury or hospitalization. This result undermines the danger associated with the use of this technique and the TPSB's efforts to place tighter restrictions on its use. Similarly, if a civilian experienced multiple kicks or punches during an interaction with police, the use of force would not be reported if they did not cause injury or hospitalization.

Furthermore, reporting requirements that are based on injury or hospitalization do not account for the mental health or psychological impact and trauma that police use of force has on an individual.

In *Maynard v. TPSB,* the Human Rights Tribunal of Ontario (HRTO) accepted evidence about the psychological impact of a use-of-force incident where Mr. Maynard, a Black man, was taken down at gunpoint by police. In that case, the HRTO stated, "There was no dispute that Mr. Maynard carries with him to this day a lasting sense of anxiety and fear whenever he sees a police officer[.]" The HRTO went on to state, "… it comes as no surprise that he [Maynard] finds himself unable to completely recover his sense of the man he was before the incident."[20]

As observed in the case of Mr. Maynard, the impact of a use-of-force incident on an individual's dignity, self-respect, or overall mental health is not contingent on the physical injury. As such, TPS should seek to collect race data on a wide range of force incidents that fall below the injury or hospitalization threshold.

The OHRC's report, *A Disparate Impact*, uncovered some of the problems associated with using a limited definition of use of force. In that report, lower-level use of force is described as incidents where physical force was used by TPS officers, but did not result in serious civilian injury or death. Using this definition, the OHRC found that Black people were significantly overrepresented in use-of-force cases involving the TPS.[21]

To understand the impact of use-of-force practices, incidents where lower-level use of force is used should be monitored and publicly reported. Leaving these incidents out of the monitoring and reporting obligations creates a gap in the oversight process.

Use-of-force reports should contain additional contextual information. Relevant context includes whether the subject was experiencing a mental health crisis or was perceived to have a mental health disability, whether the civilian was charged with an offence, and the length of time the subject was detained.

To effectively monitor use-of-force disparities, a robust definition that includes lower-level use of force is needed. The OHRC supports a definition that captures all instances where physical force is used, including "coercive touches such as wrist or arm locks, or striking the subject with the hands or feet."[22] Use of force that falls within the scope of this definition should be reported to a supervisor and form part of the TPS annual use-of-force report.

For the OHRC's recommendations on use-of-force reporting, see Recommendations 30, 31, and 32.

Handcuffs (mechanical restraints), physical restraints and zip ties

The proposed De-escalation and Appropriate Use of Force policy should require reporting on the use of restraints such as handcuffs, mechanical restraints, or zip ties where they are used for adults. This excludes routine handcuffing that occurs during an arrest. All applications of these restraints on persons under 18 years old should be reported.

There have been high-profile incidents where officers have used restraints on members of Black and Indigenous communities that have attracted criticism from human rights tribunals, police disciplinary panels, and members of the public. These incidents have sparked important policy shifts that are in line with the OHRC's recommendation to expand reporting requirements.

For example, in response to an incident where officers unjustly handcuffed an Indigenous man and his grandchild, the Vancouver Police Board developed an interim Use of Handcuffs policy after conducting its own extensive review.[23] In subsequent disciplinary police proceedings, the officers were found to have acted "recklessly using unnecessary force on Mr. Johnson and his granddaughter by applying handcuffs to the parties on arrest without good and sufficient cause."[24]

In 2020, the HRTO found Peel police officers violated section 1 of the *Code* when they handcuffed and shackled a Black six-year-old girl at her elementary school.[25] The Tribunal stated, "The handcuffing of an individual by police epitomizes a use of force that is a potent symbol of the authority of the state. Quite simply, the use of handcuffs by police restricts the individual's freedom and therefore amounts to adverse treatment."[26]

In response to this case and other concerns about systemic racial discrimination, the Peel Regional Police has entered into a Human Rights Project with the OHRC to develop a strategy to appropriately address use-of-force incidents involving youth.[31]

These incidents support the calls to monitor the use of handcuffs and mechanical restraints to ensure that they are applied without bias.

For the OHRC's recommendation on use of handcuffs and mechanical restraints, see Recommendation 31.

TPSB's role in responding to TPS data and reports that disclose racial disparities

Sections 43 and 47 of the TPSB's draft policy require the Chief of Police to present an annual report on use of force to a public meeting of the TPSB. The report should include:

- the number of use-of-force incidents, reports and applications of force in that year

- trends for the previous four years

- numbers and types of injuries to members of the public and officers sustained during use-of-force incidents, and

- perceived race of members of the public involved in use of force.

The report should also include an "analysis to identify any broad patterns or trends in incidents of use of force and/or de-escalation and their impacts, that could indicate the degree to which the Policy is effective in achieving its purposes as defined above, as well as training needs, equipment upgrade needs, and/or Policy modification needs."[27]

Where the analysis discloses disproportionalities or disparities for *Code*-protected groups, the TPSB should be required to act. As it stands, the policy does not clearly state the action the TPSB will take, or the actions that it will require from TPS, when problematic trends emerge.

The OHRC recommends that the TPSB direct the TPS to establish and implement action plans where disparities arise for all *Code*-protected groups. The action plans should be based on established benchmarks, and set targets to address the disparities or disproportionalities identified in the annual report. This recommendation is consistent with the requirements in the *Anti-Racism Act* and its data standards. But it goes beyond this framework by recommending the TPS take action where the data uncovers disparities for *Code*-protected groups not covered by the *Anti-Racism Act*, such as persons in crisis.

For the OHRC's recommendation regarding race-based disparities in reports to the TPSB, see Recommendation 34.

Discharged conducted energy weapons and subsequent investigations

The draft policy mandates an investigation[28] when an officer discharges their firearm. However, it does not mandate an investigation when an officer discharges a conducted energy weapon (CEW). Discharging a CEW should be subjected to the same investigative standards as a firearm. Both weapons are potentially lethal, and *Code*-protected groups remain disproportionately subjected to their use.

According to the TPS's draft procedure, when a firearm is discharged, an investigator is assigned to conduct a thorough investigation and submit a report. While CEW use is subject to reporting and review, it is not subject to the same scrutiny as the discharge of a firearm.

The policy and training framework currently in place has not dispelled human rights concerns related to CEWs. For example, in 2017 the OHRC's written deputation to the TPSB on CEWs referred to a Canadian study finding that people with addictions may be more likely to die after being struck by a CEW.[29]

The Inquiry's 2020 report, *A Disparate Impact*, found that Black people were grossly overrepresented in most use-of-force categories, including CEW use. Black people represented 8.8% of Toronto's population, and 45.5% of cases involving police CEW use.[30] The TPS should be directed to investigate instances when CEWs are discharged and identify trends, in an effort to combat the persistent disparities in this area.

Use of force and youth

TPS and TPSB's respective incident response and de-escalation policies do not provide much guidance on incidents involving youth.

The TPS's draft policy states that the Chief of Police will establish a process to ensure that officers are "trained to take into account individual physical, developmental and mental characteristics of persons in crisis, individuals with mental or developmental issues, and youth, so as to enable the Service Members to more successfully de-escalate incidents where such information is available."

The TPSB should clarify the policy and training objectives that would guide officers when they are engaged with vulnerable populations such as youth. The OHRC takes the position that officers should always:

- Use de-escalation techniques when engaged with young persons.

- Implement training that emphasizes the child's overall psychological and physical well-being.[31]

- Seek intervention from trained mental health or child and youth professionals to address non-criminal behaviours.

As part of these efforts, the TPS should ensure that officers use a trauma-informed approach that acknowledges that "racialized and equity-seeking groups are at greater risk for experiencing four or more types of adverse childhood experiences (ACEs) that result in trauma."[32] This is particularly important for children under the age of 12.

When young persons over 12 are engaged, officers should "employ developmentally appropriate and trauma informed tactics"[33] that include using a calm and natural demeanour and avoid threatening language.[34] Officers should employ the least intrusive interventions that consider the child's physical and mental development. In addition, heightened training for 911 dispatchers (discussed later in this chapter) will help streamline the number of incidents involving children that warrant a police response.

Considering the findings from *JKB v Regional Municipality of Peel Police Services Board*,[35] mechanical restraints like handcuffs should not be used on children.[36]

Use of lethal force

To place the highest value on the protection of life and the safety of the public, the TPSB should provide clear guidance to the TPS on circumstances where the use of deadly force is prohibited.

For example, the Camden County Police use-of-force policy defines deadly force and sets out circumstances where it should not be used.[37] Among other prohibitions, the Camden policy prohibits the use of deadly force as a means to prevent property damage or loss, to prevent the destruction of evidence, or against a person who poses a threat only to themselves and not to others.

A similar policy should be adopted by the TPS.

Commitment to "zero harm and zero death"

The Honourable Frank Iacobucci, former Justice of the Supreme Court of Canada, stated in unequivocal terms that the goal of the TPS should be "zero harm and zero death." This means that the goal should be no harm and no deaths when police interact with a member of the public.

On October 18, 2017, the TPS stated that it "striv[es] every day to achieve zero harm/zero death in all interactions with the public."[38] Sadly, this goal remains elusive, particularly for Black people.

Considering this Inquiry's finding of systemic anti-Black racism and that Black persons are more likely to be subject to police force, including lethal force, the commitment to zero harm and zero death must be reaffirmed and clarified. It must be implemented in a manner that takes into account the unique experiences of Black communities.

For the Inquiry's recommendations regarding the use of lethal and less-lethal force, see Recommendations 23, 25, 26, 27, and 28.

Disarming front-line officers in appropriate circumstances

Being a police officer can be a dangerous job. Police officers are often asked to deal with high-stress situations where their health and safety, and that of the persons they encounter, may be at risk. The presence of guns in Toronto makes police work even more dangerous and, as such, there are times when an armed response is required.

However, there may be circumstances where police officers do not need to be armed, and where the presence of an armed officer may be unnecessarily frightening or intimidating, and/or escalate a situation rather than de-escalate. The OHRC believes that the TPS should consider disarming some front-line officers in appropriate circumstances.

This Inquiry found that between 2013 and 2017, a Black person in Toronto was nearly 20 times more likely than a White person to be involved in a fatal shooting by the TPS. This disparity warrants a serious exploration of changes to policies or procedures that can reduce the number of shooting incidents involving TPS officers, while preserving the safety of all parties during interactions with police.

Members of Black communities and police accountability advocacy groups have long pushed for disarming. For example, the TPSB's Anti-Racism Advisory Panel recommended that the TPSB "commit to undertake a study of jurisdictions where police do not routinely patrol with firearms, to determine if and how such a model could be adopted in whole or in part within Toronto."[39]

There is no statutory requirement for police officers to carry guns. It is not mandated in the *Police Services Act* or any other legislation or regulation. Rather, O. Reg. 283/08 (3.1)(2): *Equipment and Use of Force* grants Chiefs of Police the power to exercise their discretion to authorize an officer to carry a firearm by enacting a procedure.[40]

Thus, Chiefs of Police appear to have the discretion to determine whether and which officers carry firearms.

In Toronto, the possession of a firearm is authorized by Procedure 15-01 Incident Response (Use of Force/De-escalation), which states that officers be "issued a firearm." Notably, there is no stated requirement that officers "carry" that firearm while on patrol.

At a TPSB meeting in April 2021, counsel for the TPS acknowledged that the requirement that all officers carry a firearm was not set out in the *Police Services Act* or any legislation or regulation, but rather was a matter of occupational health and safety and collective bargaining, based on the tasks officers are required to perform.[41]

The TPSB's former Chair Jim Hart and former Executive Director Ryan Teschner reaffirmed this position during an interview with the OHRC. They further emphasized that if the issue of disarming was to be reviewed, it would need to be at a provincial level.[42]

However, there is no express language in TPS collective agreements indicating a legal requirement for officers to carry a firearm at all times, nor does there appear to be any case law where the courts or arbitrators have confirmed that police officers in Ontario must carry firearms.[43]

TPSB's collective agreement with the TPA includes sections that state that all uniform patrol cars, except those assigned to traffic duties, shall be manned by two fully trained and armed police officers while on patrol during specified hours.[44] It could be argued that the decision to arm officers is an implied term of the collective agreement. Nonetheless, these provisions do not expressly preclude the TPS or TPSB from exploring whether officers can be deployed unarmed in low-risk situations.[45]

Contrary to the stereotype of a criminal armed with a gun, in most TPS use-of-force cases, regardless of race, the civilians were not in possession of a weapon at the time of their encounters with police.[46]

The TPS and TPSB should urge the provincial government to publicly review whether there are situations where officers can be deployed with non-lethal weapons instead of guns, and engage with the provincial government as part of this review.

For the OHRC's recommendations regarding use of force, non-lethal weapons and de-escalation, see Recommendations 23, 26, and Recommendations 91 and 92.

Supervision to address systemic racial discrimination in TPS use of force

This Inquiry's finding that Black people are disproportionately impacted by TPS's use of force shows that supervision within the TPS must be strengthened.

TPS's current policies and procedures may capture individual instances of discrimination, but it is unclear whether there are systems in place to effectively monitor the connection between these incidents and systemic barriers.

The Incident Response procedure should provide more guidance in this area. For example, in his interview with the OHRC, Superintendent of Professional Standards, Domenic Sinopoli, indicated that if he was reviewing a case alleging excessive force involving a Black complainant, he would not examine whether race was a factor unless there was something to trigger a review. However, specific allegations of racial profiling or a statement by a complainant or witness would trigger further analysis.[47]

TPS's issued Incident Response procedure sets out a process for reviewing each use-of-force report. As part of this process, a supervisory officer will notify the Unit Investigation Officer and/or the Unit Complaint Coordinator and review all body-worn camera and in-car camera footage of the officers involved in the incident.[48] This review considers the principles of fair and impartial policing to recognize implicit biases.

The draft Incident Response procedure also stipulates that upon being notified, a Unit Investigating Supervisor shall review a use-of-force report for the purpose of identifying instances of inappropriate or excessive use of force that requires additional training, discipline, or notification of the SIU, and to "identify and address any evidence of the use of force based on *Human Rights Code* protected grounds."[49]

However, based on a review of TPS procedures, and interviews with TPS leadership about supervision, the OHRC found gaps in TPS's ability to monitor systemic discrimination. For example, the issued Incident Response procedure states that the Unit Commander – Professional Standards will conduct an annual study that includes an analysis of use-of-force trends for the entire Service.[50] This section of the procedure does not expressly direct the Unit Commander to identify trends related to racial discrimination. Nor does it direct the Unit Commander to advance recommendations to the TPS or TPSB in response to the trends identified.

Progress has been made to increase the scope of the Equity, Inclusion and Human Rights Unit's work, and to further support officers in their ability to identify racial profiling, discrimination, and anti-Black racism. This work must continue to be prioritized.

Effective early warning or early intervention systems (EIS) based on race data and other important indicators are particularly important to enhance screening for racial profiling and racial discrimination in TPS use of force. Further discussion of EIS can be found in Chapter 9.

Finally, day-to-day supervision of officers and performance management should be strengthened to identify, monitor, and address the racial profiling, discrimination and systemic factors that may contribute to the overrepresentation of Black person in use-of-force data.

The OHRC reviewed over 140[51] Use of Force Reports made between July 2016 and June 2017. Despite the reports having a field to indicate a recommendation for additional training, the OHRC did not find any incidents where it was recommended as a result of a use-of-force incident, including training on racial profiling or racial discrimination.[52]

When asked, the TPS was unable to provide the number of officers for whom additional training was recommended during the period of the Inquiry.[53] Deputy Chief Shawna Coxon advised that additional training would depend on the context of the situation and the officer's history.[54] Although TPS supervisors conduct regular reviews of use-of-force incidents, the OHRC is concerned that officers do not appear to be referred for training to address issues. This suggests a fundamental flaw in this accountability mechanism.

See OHRC's recommendations regarding supervision, see Recommendations 33, 34, and 61(b).

Transfer of public safety functions to other agencies or organizations

During the Inquiry, there was considerable public discourse on the concept of detasking. It was consistently suggested that reducing the number of incidents with which police are tasked would reduce use-of-force incidents, racial disparities in use-of-force data, and improve public safety.

University of Toronto Professor Akwasi Owusu-Bempah characterized detasking as:

…a reallocation or a reassignment of certain tasks and functions that we recognize that the police aren't performing very well, that there are negative outcomes to their involvement in those activities such as increased risk for the use of violence and potential for criminalization…[55]

In a report issued in early 2023, the British Columbia Office of the Human Rights Commissioner stated that detasking may result in greater safety and better outcomes:

Detasking the police in key areas would improve community safety and particularly the safety of Indigenous, Black and other racialized communities who are disproportionately impacted by biased policing by investing in evidence-based services that reflect community needs.

Improving community safety requires a shift in focus from the police as default responders to other community safety strategies. Key steps include detasking police as first responders to mental health crises, substance use crises and homelessness, and reallocating funding towards health-based services and housing supports.[56]

Former Mayor of Toronto John Tory spoke positively about the potential for detasking to address systemic racism in policing:

We must fix that model by changing the way policing is done in order to stamp out systemic racism within our police service, and to re-think, in some cases, whether police are the right community response at all.[57]

Justice Gloria Epstein in her *Report of The Independent Civilian Review into Missing Person Investigations* recommended that certain tasks previously performed by police be transferred to civilians.[58]

The TPS and TPSB response to community calls for transfer of public safety functions

The TPSB and TPS have taken some positive steps towards detasking. In 2020, the TPSB published *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (*Police Reform* Report).

Responding to community calls for detasking, the TPSB adopted the following recommendations from its *Police Reform* report:

1. The Executive Director to work with the Service, City Manager and other stakeholders to identify the categories of calls that might be addressed by a non-police response.
2. The Executive Director to work with the City Manager, Government of Ontario, community based mental health and addictions service providers, organizations representing people with mental health and/or addictions issues and other stakeholders to develop new and enhance existing alternative models of community safety response, including mobile mental health and addictions crisis intervention.
3. The Executive Director to work with the Service, and others including the Auditor General, to identify non-core policing services that can be delivered by alternative service providers.
4. The Executive Director to work with the Service, and others including the Auditor General, to identify funding or areas of funding currently allocated to policing that can potentially be re-allocated to support alternative community safety models and/or fund other City of Toronto programming and services that contribute to community safety.
5. The Chief of Police to work with the Chair and Executive Director to develop and implement a line-by-line approach to reviewing the police budget in order to identify opportunities for service delivery improvement and efficiencies, including the possible redirection of non-core policing functions and their associated funding to alternative non-police community safety providers or community safety services or programming.
6. The Executive Director to engage the Service to detail potential reductions to the Toronto Police Service budget that would result from any proposed changes to the current community safety response model, once the details of this alternative model are developed.

The TPS and TPSB have made considerable progress implementing Recommendations 1 and 2 through the launch of two pilot projects:

1. Community Crisis Support Services Pilot (CCSSP), and

2. 911 Crisis Call Diversion Pilot (CCDP).

These programs are described below.

At time of writing, the TPS had made the following progress on Recommendations 3–6:

3. In progress with a "targeted due date" of September 24, 2024.

4. In progress with the details "under assessment" and the targeted due date to be determined. According to the Staff Superintendent responsible for Strategy and Risk Management, which includes the implementation of the recommendations in the TPSB's *Police Reform* Report, the Auditor General has been working with the TPS for over a year to identify categories of calls the TPS should not be involved with (see below). Before divestment can occur, "there has to be an entity that will pick it up that is able to fill the gap."[37]

5. Is "being organized and timelines are being established." The "targeted due date" is December 2023. According to the Staff Superintendent responsible for Strategy and Risk Management, (5) overlaps with (3) and (4).

6. Appears to be partially contingent on the CCSSP being expanded across Toronto, which is expected in 2025.

Mental health and alternative community safety models

During the Inquiry, the OHRC heard community calls to improve outcomes for vulnerable segments of Black communities during encounters with the police. Throughout our consultations with many stakeholders, including TPS leadership, mental health crisis response was identified as a task that mental health professionals could perform more effectively. Such a shift could also reduce use-of-force encounters involving vulnerable people.

Within this context, the inquest into the death of Andrew Loku, which examined race and mental health, recommended the TPS use the Gerstein Crisis Centre police telephone line when interacting with a person in crisis.[59]

The OHRC is pleased to see that there has been significant work on civilian-led mental health crisis responses over the past year, which culminated in the City of Toronto's CCSSP, the 9-1-1 CCDP, and the expansion of the Mobile Crisis Intervention Teams (MCITs).

The OHRC supports these pilot projects and the expansion of the MCIT program. However, the TPS and TPSB should address community calls to expand civilian-led mental health crisis responses to reduce police interactions with people in crisis. These services should also be culturally responsive to Black and other racialized communities. Improvements to these programs and funding are discussed below.

Community Crisis Support Service Pilot

In February 2021, the Toronto City Council approved the Community Crisis Support Service Pilot (CCSSP) program.

The CCSSP provides an alternative to police enforcement, creating a community-based, client-centred, trauma-informed response to non-emergency crisis calls and wellness checks. The program focuses on health, prevention, and well-being.

On February 2, 2021, Toronto City Council voted unanimously to implement the CCSSP, with the original budget, including a direction to the "City Manager to consult with the Toronto Police Services Board and the Toronto Police Chief on the potential reallocation of funds from the Toronto Police Service budget to ensure that the funding of the Community Crisis Support Services Pilot will not result in new financial burden to Toronto residents and to report the outcomes of this consultation through the City's budget process."[60]

The program began with a budget of $1.7 million in 2021, which will increase to $7.2 million in 2024.[61]

In its submission to the City of Toronto's Executive Committee, the Gerstein Crisis Centre stated in relation to the CCSSP that it was:

> … concerned that the financial commitments expressed by the city to support the new initiatives will not be sufficient and fall short of what is needed to achieve the intended outcomes … We strongly urge the City to re-examine their own budget and secure further funding in collaboration with the province.[62]

A January 12, 2022 report from the City Manager to the Executive Committee states that "city-wide implementation is expected in 2025, if not sooner."[63]

Programs like the CCSSP should be further expanded to allow room for other proactive mental health services.

For example, Assertive Community Treatment (ACT) is a program that provides intensive support services for individuals with serious mental illness who have very complex needs and find engaging with other mental health services challenging.[64] ACT teams can be another resource to help prevent mental health crises that currently engage a police response.[65]

The OHRC notes the following recommendation from the *Rethinking Community Safety: A Step Forward for Toronto* report:

The City recognize that policing is not the most appropriate means of addressing community safety in all settings, and shift responsibility and resources to more appropriate strategies as follows:

[…] Initiate the necessary processes to plan and implement the reallocation of approximately $150 million in funds currently used to police people with mental health challenges and invest those funds in the expansion of civilian crisis response programs, safe beds, ACT teams, Intensive Case Management, and other crisis services.[66]

9-1-1 Community Crisis Diversion Pilot

On June 24, 2021, the 9-1-1 Community Crisis Diversion Pilot (CCDP) budget of $522,000 was approved by the TPSB for a one-year term from August 1, 2021 to July 31, 2022.

In his report to the TPSB at the September 13, 2022 meeting, then-Interim Chief Ramer noted:[67]

At its meeting of July 27, 2022, the [Toronto Police Services] Board received a six-month mid-term evaluation of the 9-1-1 C.C.D. in relation to the results of the pilot over the first 6 months. The mid-term evaluation reported on the success of the 9-1-1 C.C.D. having diverted 117 events from a police response.

Because of its success, the Chief recommended extending the 9-1-1 CCDP from October 1, 2022 to September 30, 2023, with an increased budget of $1,002,300. The budget enhancement provides for expanded services, including:[68]

[…] expanding the catchment area from 14, 51 and 52 Divisions to anywhere in Toronto, and increasing staffing from one crisis worker operating in the 9-1-1 CCDP for 20 hours each day (between 07:00 a.m. and 03:00 a.m.) to a second crisis worker to overlap with the first during the peak hours of demand for 24 hours each day. This avoids any gap in alternative response option service.

The TPSB approved the recommendation on September 13, 2022.[69]

In the TPS news release, Susan Davis, Executive Director of the Gerstein Crisis Centre, noted:

Gerstein Crisis Centre welcomes the expansion of the 9-1-1 Crisis Call Diversion Pilot Project with our Toronto Police Service partners as we continue to build purpose-built infrastructure for mental health support across the City of Toronto. Our communities are facing complex issues and solutions will require innovative and collaborative models that work across sectors to create a strong support network for all Torontonians connecting people to the right supports when they need them and wherever they reach out.[70]

The OHRC also welcomes the expansion and extension of the 9-1-1 CCDP. The TPS and TPSB should consider making the program permanent so that vulnerable people in crisis can be assisted in the safest and most culturally responsive way possible.

For the OHRC's recommendations regarding non-police crisis response and an independent civilian review or commission to address community calls for de-tasking, see Recommendations 7 and 8.

Mobile Crisis Intervention Teams

Mobile Crisis Intervention Teams (MCITs) are collaborations between participating Toronto-area hospitals and the TPS. A mental health nurse and a specially trained police officer respond to situations involving people experiencing a mental health crisis.[71]

The program has been in place for many years. However, it has been limited to certain divisions and times of day. Over the years, there have been clear and consistent requests and recommendations to make the program available across the city around the clock.

On August 18, 2020, the TPSB directed the Chief to create a plan to implement an "immediate expansion of the MCIT program … with a view to providing MCIT services 24 hours a day, seven days a week, and across all Divisions."[72] Then-Interim Chief Ramer confirmed that the TPS would have 24-hour coverage from MCITs by the end of the first quarter of 2021.[73]

At its April 22, 2021, meeting, the TPSB received a report from Chief Ramer stating that MCITs would be expanded to run 14.5 hours a day (9:00 a.m. to 11:30 p.m.)[74] However, the report also noted:[75]

Expansion to provide [MCIT] coverage 24 hours a day, 7 days a week, and across all divisions will require on-going advocacy in collaboration with hospital partners for more funding from the Ontario Ministry of Health to increase the number of nurses in the program and support their salaries. Program nurses are employed by the hospitals and their salaries are, therefore, paid through provincial health care funding allocations.

The Divisional Crisis Support Officer (D.C.S.) Program has been developed to provide additional support to those in crisis when the M.C.I.T.s are unavailable or not working. The D.C.S. will be a 1 officer car deployed daily in each division throughout the city on each platoon. The D.C.S. officer will have specialized training in de-escalation techniques, communication skills, the role intersectionality plays in mental health disorders and common mental health disorders.

By the completion of the M.C.I.T. expansion plan in [April 2021], the M.C.I.T.'s and D.C.S. officers together will provide 24-hour coverage for mental health response and support to the community and divisional officers[.]

The increase in MCIT coverage by the TPS and TPSB is important for the safety of marginalized communities in Toronto. Divisional Crisis Support officers appear to provide useful support in lieu of 24-hour MCIT coverage.

There continue to be issues that frustrate MCIT coverage. According to an internal memo obtained by CBC News, the TPS temporarily suspended the deployment of Divisional Crisis Support officers in September 2021, citing "staffing pressures." These officers were intended to assist with MCITs exclusively to ensure coverage. However, now they are expected to attend any emergency calls regardless of their nature. The memo states that the "intent is to return to the original program deployment model as soon as staffing allows."

When asked to comment on the memo, a spokesperson for the TPS stated: "Specifically, instead of having only one dedicated police officer on each shift, we are training more [primary response unit] officers in order for them to be better prepared to respond to mental health calls for service."[76]

The OHRC urges the TPS and TPSB to maintain its original goal in the 81 Recommendations arising from the *Police Reform* Report. The OHRC encourages the TPS and TPSB to engage Ontario's Ministry of Health to achieve full 24-hour MCIT coverage across Toronto.

For the OHRC's recommendation regarding MCIT expansion, see Recommendations 24 and 103.

Auditor General Reports

In January 2021, as part of its Police Reform decisions, the TPSB entered into a Memorandum of Understanding with Toronto's Auditor General to have independent audits of several areas of the Service's operations. At the June 2022 Board meeting, the Auditor General presented three reports.[77]

The Auditor General's first report deals with an audit of the 9-1-1 Public Safety Answering Point Operations, with a focus on staffing, and improved information management.[78]

The second report reviews certain types of calls-for-service that police currently respond to, and makes recommendations to support more effective responses. In doing so, the Auditor General identified six "event types" of calls for service where police attendance is likely "not essential."[79] The report found that 40% of calls for service in six lower-priority event types "could have been handled by alternative responses if proper alternative responses were in place."[80]

The Auditor General published a third report to identify key common themes and findings across the two projects.[81]

It is important to note that the Auditor General did not conduct a race-based analysis in completing the three reports.

These reports identify several key areas for change and action, such as undertaking reviews and evaluations, and improving information and data collection so that the Service can better allocate resources and improve its workforce management.[82]

These actions would strengthen alternative community safety models – especially in responding to people facing mental health crises.

During the June 2022 TPSB meeting, then-Chair Jim Hart commented on the Auditor's recommendations as follows:

…the Service, in its management response, accepted all recommendations and committed to implementing them, and work with the city and other stakeholders where necessary. The Board strongly supports the Service in its dedication to quickly moving forward to implement these recommendations and looks forward to seeing progress in this regard.

I believe that working to quickly implement the recommendations contained in these significant reports is a clear demonstration of our commitment to ensuring that policing is delivered to Torontonians in the most efficient and effective way possible.

I view the recommendations made by the Auditor General as another step in our ongoing work to evolve and modernize the Service to meet the complex needs of the City, by understanding when police services are needed, recognizing when the public would be better served by another agency or stakeholder, and allocate the Service's and other resources to deliver community safety, and ensure community wellbeing, most efficiently and effectively. This is complex, collaborative work that will take time and effort, but the result will be better, more effective services for everyone. [83]

The TPA also supported the Auditor's reports in a public statement:

The Toronto Police Association is thanking City of Toronto Auditor General Beverly Romeo-Beehler and her team for their thorough, evidence-based examination of 9-1-1 Operations and Police Response to Calls for Service and is asking the Toronto Police Service and all levels of government to move quickly on the AG's recommendations …

The TPA and its members have known for years that without a proper investment in other social services, calls for help will continue to fall at the feet of policing; this cannot continue. As the AG notes, our members want to help people, but we are also open to different ways of doing business, including having a non-police entity respond to certain calls for service, where and when it's appropriate." [84]

The OHRC supports the findings and recommendations made in the Auditor General's reports, and is encouraged by the TPS, TPSB and TPA's decision to acknowledge the reports' findings.

The OHRC encourages the TPSB and TPS to continue their efforts to detask, and empower community agencies/organizations to play a more significant role in promoting public safety, particularly with respect to calls for mental health support.

The alternative service delivery models discussed in this section have the strong potential to address critical gaps in police service delivery. First, the alternative service delivery models provide experts in areas such as mental health with the resources and funding required to improve the response to persons in crisis. In doing so, outcomes for these *Code*-protected groups, including Black persons experiencing crisis, may be improved. Secondly, the availability of alternative service providers will reduce the demand for police services. In turn, police resources may be directed to other tasks.

Chapter 7 Endnotes

[1] Clare Lewis, *The Report of the Race Relations and Policing Task Force* (Toronto: Ministry of Attorney General, 1989), online: https://archive.org/details/mag_00066901.

[2] Stephen Lewis, *Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae* (Toronto: 9 June 1992), online (pdf): www.siu.on.ca/pdfs/report_of_the_advisor_on_race_relations_to_the_premier_of_ontario_bob_rae.pdf.

[3] The Honourable Roy McMurtry and Alvin Curling, *The Review of the Roots of Youth Violence,* vol 1 (Toronto: Queen's Printer, 2008) at 119, online (pdf): https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn30240-vol1-eng.pdf.

[4] The Honourable Frank Iacobucci, Police Encounters with People in Crisis: An Independent Review Conducted by The Honourable Frank Iacobucci for Chief of Police William Blair, Toronto Police Service (Toronto: Toronto Police Service, 2014) at 17, 18, 153–155, 205–209, online (pdf): Global News https://globalnews.ca/wp-content/uploads/2015/06/police-encounters-with-people-in-crisis.pdf.

[5] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Reyal Jardine-Douglas, Sylvia Klibingaitis, and Michael Eligon (February 2014) at Recommendation 10.

[6] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Andrew Loku (30 June 2017) at Recommendations 1, 8.

[7] For example, there have been a number of fatal shootings by TPS involving persons with mental health issues, including Andrew Loku, Michael Eligon, Lester Donaldson, and Albert Johnson. Fatal encounters that did not involve a shooting include the death of Regis Korchinski-Pacquet.

[8] TPS, Procedure 15-01 Incident Response (Use of Force/De-Escalation) (27 June 2022), online (pdf): https://www.tps.ca/media/filer_public/3c/44/3c44bb8e-f95b-4d98-b02d-9ac61650e5f3/15-01_incident_response_-_use_of_forcede-escalation_20220627ext.pdf.

[9] TPS, "15-01 – Incident Response (Use of Force/De-escalation) Consultation Draft" at 4—5 online: https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=771&catid=68&m=0.

[10] The TPSB's policy on Race-Based Data Collection, Analysis, and Public Reporting explains the scope of interactions that will be subject to race-based data reporting. The policy states that TPS has "chosen a phased implementation of this Policy, with a focus on a single area for collection first: Use of Force. After this first phase, the Board will, as soon as possible, expand the application of this Policy …". See TPSB, Policy on Race-Based Data Collection, Analysis and Public Reporting (19 September 2019), online: https://www.tpsb.ca/policies-by-laws/board-policies/177-race-based-data-collection-analysis-and-public-reporting.

[11] RRO 1990, Reg 926, s 14.5 (1).

[12] TPSB, Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020), at Appendix A, recommendation 49 online (pdf): online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[13] Equipment and Use of Force, RRO 1990, Reg 926, s 14.5, online: https://canlii.ca/t/tv8#sec14.5. The provincial use of force report is to be completed by a Service member when the use force in the circumstances specified by section 14.5(1) of the Equipment and Use of Force regulation (RRO 1990, Reg 926).

[14] TPSB, "De-escalation and Appropriate Use of Force Consultation Draft", at section 45, online: https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=756&catid=68&m=0

[15] Equipment and Use of Force, RRO 1990, Reg 926, s 14.5, online: https://canlii.ca/t/tv8#sec14.5.

[16] TPSB, "De-escalation and Appropriate Use of Force Consultation Draft," at section 47 online: https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=756&catid=68&m=0.

[17] Chokeholds are a neck restraint which constrict a person's airway. The "carotid hold" technique obstructs blood flow to the brain, but not the airway, causing a person to become unconscious: OHRC, "OHRC letter and submission on the Equipment and Use of Force Regulatory Amendment and Implementation of Modernized Use of Force Report" (30 October 2022), online: https://www.ohrc.on.ca/en/news_centre/ohrc-letter-and-submission-equipment-and-use-force-regulatory-amendment-and-implementation.

[18] The OHRC reviewed a TPS draft procedure, which was shared publicly in early 2023, TPS, "15-01 – Incident Response (Use of Force/De-escalation) Consultation Draft" online: https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=771&catid=68&m=0.

[19] TPS, Incident Response Procedure (15-01) (27 June 2022), online (pdf): https://www.tps.ca/media/filer_public/3c/44/3c44bb8e-f95b-4d98-b02d-9ac61650e5f3/15-01_incident_response_-_use_of_forcede-escalation_20220627ext.pdf. The procedure also requires members to complete a use of force report when an officer: draws a handgun in the presence of a member of the public; discharges a firearm or less lethal weapon; points a firearm regardless if the firearm is a handgun or long gun; uses a weapon other than a firearm on another person; uses a CEW as a demonstrated force presence, in drive stun mode or full deployment. The TPSB's Use of Force policy approved March 22, 2007 does not require use of force reporting where the physical force used does not result in an injury requiring medical attention.

[20] *Maynard* v Toronto Police Services Board, 2012 HRTO 1220 at para 196.

[21] This includes lower-level use-of-force cases that resulted in physical injury (such as bruises and lacerations) but did not rise to the level of the SIU's "serious injury" threshold. OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (Toronto: OHRC, 2020), Executive Summary at 3, online (pdf): https://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20-%20TPS%20inquiry%20%28updated%20January%202023%29.pdf.

[22] Baltimore Police, "Policy 1115, Use of Force" (24 November 2019), Definitions at 2—6, online (pdf): https://public.powerdms.com/BALTIMOREMD/documents/51042.

[23] Vancouver Police Department, "Vancouver Police updates handcuffing policy" (7 April, 2023), online: https://vpd.ca/news/2023/04/07/vancouver-police-updates-handcuffing-policy/#:~:text=The%20Vancouver%20Police%20Board%20undertook,devices%20used%20by%20VPD%20officers.

[24] "Vancouver police acted 'oppressively' during arrest of BMO customer and his granddaughter"

 APTN National News (6 April 2022), online: https://www.aptnnews.ca/national-news/vancouver-police-acted-oppressively-during-arrest-of-bmo-customer-and-his-granddaughter/.

[25] JKB v Regional Municipality of Peel Police Services Board, 2020 HRTO 1040.

[26] JKB v Regional Municipality of Peel Police Services Board, 2020 HRTO 1040 at para 34.

[27] TPSB, "Consultation Draft: De-Escalation and Appropriate Use of Force" (22 March 2007) at s 43(h), online: https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=756&catid=68&m=0.

[28] Section 41 of the TPSB's De-Escalation and Appropriate Use of Force policy states that the Chief of Police will "[i]mmediately cause an investigation to be made where a member unintentionally or intentionally discharges their firearm, except on a target range or in the course of weapon maintenance."

[29] Temitope Oriola, Nicole Neverson and Charles T Adeyanju, "'They should have just taken a gun and shot my son': Taser deployment and the downtrodden in Canada" (2012) 18:1 *Soc Identities* 65 at 65, 74. The researchers found that 16 of 26 Taser-related deaths in Canada involved persons with "chronic drug problems."

[30] Scot Wortley, Ayobami Laniyonu and Erick Laming, *Use of force by the Toronto Police Service: Final Report* (Toronto: Ontario Human Rights Commission, 2020) at 95, online (pdf): https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20TPS%20report%20%28updated%20January%202023%29.pdf.

[31] JKB v Regional Municipality of Peel Police Services Board, 2020 HRTO 1040 at para 98.

[32] "Trauma is the response to a deeply distressing or disturbing event that overwhelms an individual's central nervous system and their ability to cope." See Thrive Toronto and Wellesley Institute for the City of Toronto, "Safe TO: Roadmap to become a Trauma-Informed City" at 1, online (pdf): https://www.toronto.ca/legdocs/mmis/2021/ex/bgrd/backgroundfile-168554.pdf.

[33] Baltimore Police, "Policy 1115, Use of Force" (24 November 2019), Children and Youth at 10, online (pdf): https://public.powerdms.com/BALTIMOREMD/documents/51042.

[34] Baltimore Police, "Policy 1115, Use of Force" (24 November 2019), Children and Youth at 10, online (pdf): https://public.powerdms.com/BALTIMOREMD/documents/51042.

[35] JKB v Regional Municipality of Peel Police Services Board, 2020 HRTO 1040 at para 98.

[36] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (Toronto: TPS, 2022), online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf includes an appendix with 38 action items at 93. One of the action items calls for the expansion of "Adverse Childhood Experience Training to all uniform members. Currently, training is provided to Neighbourhood Community Officers." It is unclear how the draft policy on de-escalation and use of force informs this training as the policy does not address youth.

[37] See Camden County Police, Use of Force Policy at sections 4.5–4.8 online: https://www.policingproject.org/camden.

[38] TPSB, "Discussion Paper for Public Consultation" delivered at Achieving Zero Harm/Zero Death – An Examination of Less-Lethal Force Options, including the Possible Expansion of Conducted Energy Weapons (CEWs) (18 October 2017), online: www.tpsb.ca/images/TPSBCEWConsultation_Agenda_DisPaper.pdf#:~:text=The%20Toronto%20Police%20Service%20strive,and%20safest%20place%20to%20be.

[39] ARAP, Submissions to the Toronto Police Services Board on the Draft De-escalation and Appropriate Use of Force Policy, online: https://tpsb.ca/43-consultations-and-publications/dauf/370-anti-racism-advisory-panel

[40] *Police Services Act*, RSO 1990, c P15; Equipment and Use of Force, O Reg 283/08.

[41] TPSB, "Virtual Public Meeting: April 22, 2021" (22 April 2021), at 2:11:10 online: https://www.youtube.com/watch?v=zQJ-0lzM8xE.

[42] OHRC Interview with former Chair Jim Hart and then-Executive Director Ryan Teschner (Toronto Police Service Board) (14 October 2022).

[43] Ontario Ministry of Labour, Training and Skills Development "Collective Agreements" (9 June 2021), online: https://sp.ltc.gov.on.ca/sites/mol/drs/ca/search/pages/results_en.aspx?k=Toronto%20Police#Default=%7B%22k%22%3A%22Toronto%20Police%20Services%20Board%22%2C%22r%22%3A%5B%7B%22n%22%3A%22LTCIMEmployer%22%

[44] Toronto Police Service Collective Agreement between the Toronto Police Services Board and the Toronto Police Association 2019-2023 at articles 7.08, 8 online: https://ws.lr.labour.gov.on.ca/CA/doc/913-22339-23%20(951-0222)?library=Public%20Administration .

[45] The *Occupational Health and Safety Act* applies to policing and may raise some points to consider. For example, officers have the right to refuse unsafe work. However, "if the hazard is inherent in the work and if the work refusal puts someone else in danger, then the worker cannot refuse unsafe work." See Public Services Health & Safety Association, "This National Police Week, Consider OHS in Your Police Agency" (19 May 2022), online: https://www.pshsa.ca/blog/this-national-police-week-consider-ohs-in-your-police-agency#home-pshsa-logo. See also *Occupational Health and Safety Act*, RSO 1990, c O.1, s 43, online: https://canlii.ca/t/2km#sec43.

[46] Scot Wortley, Ayobami Laniyonu and Erick Laming, *Use of force by the Toronto Police Service: Final Report* (Toronto: Ontario Human Rights Commission, 2020) at 64 and 102, online (pdf): https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20TPS%20report%20%28updated%20January%202023%29.pdf. Between 2013 and 2017, the dataset reveals that very few SIU cases involved armed attacks on TPS officers. In fact, most civilians involved in police use of force cases were unarmed during their encounter with the police. Like the SIU cases, in lower-level use-of-force cases, eight out of 10 cases (80%) involved unarmed civilians, and even when armed, civilians rarely used weapons to threaten or assault police officers.

[47] OHRC interview with Superintendent Domenic Sinopoli (Professional Standards Unit) (25 February 2020).

[48] This policy provision is in accordance with the 38 action items arising from the TPS's analysis of its 2020 Race Based Data Collection. Specifically, the TPS has committed to implement mandatory reviews of body-worn cameras and in-car camera systems for all use-of-force incidents (discussed in greater detail in Chapter 9).

[49] TPS, 15-01 Incident Response (Use of Force/ De-escalation) Consultation Draft at s.19, online https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=771&catid=68&m=0

[50] TPS, Incident Response Procedure (15-01) (27 June 2022) at 12 online (pdf) https://www.tps.ca/media/filer_public/3c/44/3c44bb8e-f95b-4d98-b02d-9ac61650e5f3/15-01_incident_response_-_use_of_forcede-escalation_20220627ext.pdf.

[52] Due to limitations of the TPS data collection systems, the OHRC and Dr. Wortley were only able to identify 141 Use of Force Reports containing sufficient information to allow for meaningful analysis. For a detailed description of the identification process, see Scot Wortley, Ayobami Laniyonu and Erick Laming, *Use of force by the Toronto Police Service: Final Report* (Toronto: Ontario Human Rights Commission, 2020) at 93, online (pdf): https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20TPS%20report%20%28updated%20January%202023%29.pdf.

[52] Scot Wortley, Ayobami Laniyonu and Erick Laming, *Use of force by the Toronto Police Service: Final Report* (Toronto: Ontario Human Rights Commission, 2020) at 86, online (pdf): https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20TPS%20report%20%28updated%20January%202023%29.pdf.

[53] Letter to the OHRC with answers and materials from Superintendent Christopher Kirkpatrick (3 September 2020) at 9.

[54] OHRC interview with Deputy Chief Shawna Coxon (Communities and Neighbourhood Command) (28 February 2020).

[55] Brooklyn Neustaeter, "What defunding the police could look like in Canada's largest city" *CTV News* (10 June 2020), online: *CTV News* www.ctvnews.ca/canada/what-defunding-the-police-could-look-like-in-canada-s-largest-city-1.4977969.

[56] British Columbia's Office of Human Rights Commissioner, *Equity is safer: Human rights considerations for policing reform in British Columbia* (November 2021) at 49, online: www.bchumanrights.ca/publications/scorpa/.

[57] Nick Boisvert "Toronto Mayor John Tory calling for police reform in bid to 'stamp out systemic racism," CBC News online: https://www.cbc.ca/news/canada/toronto/tory-police-reform-motion-1.5626…

[58] The Honourable Gloria J. Epstein, *Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations*, Independent Reviewer at p. 727 and 869.

[59] Office of the Chief Coroner, *Jury Recommendations Inquest into the death of Andrew Loku* (30 June 2017) at Recommendation 14.

[60] Toronto City Council, "EX20.1 – Community Crisis Support Service Pilot" (2 February 2021), online: http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX20.1.

[61] City of Toronto, "EX20.1 – Report for Action – Community Crisis Support Service Pilot" (13 January 2021) at 18, online (pdf): www.toronto.ca/legdocs/mmis/2021/ex/bgrd/backgroundfile-160016.pdf.

[62] Gerstein Crisis Centre, "Deputation to City of Toronto Executive Committee Re: Community Support Service Pilot (Ex20.1)" (26 January 2021) online (pdf): www.toronto.ca/legdocs/mmis/2021/ex/comm/communicationfile-126274.pdf.

[63] City of Toronto, "Report for Action – 2022 Launch of Community Crisis Support Service Pilots and Policing Reform Updates" (12 January 2022), online (pdf): www.toronto.ca/legdocs/mmis/2022/ex/bgrd/backgroundfile-175060.pdf.

[64] Canadian Mental Health Association, "Assertive Community Treatment (ACT)", online: https://toronto.cmha.ca/programs-services/assertive-community-treatment-act-teams/.

[65] Toronto Neighbourhood Centres et al, *Rethinking Community Safety: A Step Forward for Toronto* (2021) at 10, online (pdf): https://ccla.org/wp-content/uploads/2021/07/Rethinking-Community-Safety-A-Step-Forward-For-Toronto-Full-Report-12.pdf.

[66] Toronto Neighbourhood Centres et al, *Rethinking Community Safety: A Step Forward for Toronto* (2021) at 23–24, online (pdf): https://ccla.org/wp-content/uploads/2021/07/Rethinking-Community-Safety-A-Step-Forward-For-Toronto-Full-Report-12.pdf.

[67] TPSB, "Minutes of Public Meeting: September 13, 2022" (13 September 2022), Request to Extend Term of 9-1-1 Crisis Call Diversion Pilot Project from James Ramer, Chief of Police at 4, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=752&catid=62&m=0.

[68] TPSB, "Minutes of Public Meeting: September 13, 2022" (13 September 2022), "Toronto Police Services Board Report: Request to Extend Term of 9-1-1 Crisis Call Diversion Pilot Project", James Ramer, Chief of Police (29 August 2022) at 13, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=752&catid=62&m=0.

[69] TPSB, "Minutes of Public Meeting: September 13, 2022" (13 September 2022), Request to Extend Term of 9-1-1 Crisis Call Diversion Pilot Project from James Ramer, Chief of Police at 4, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=752&catid=62&m=0

[70] Blue Line Staff and Toronto Police Service, "Toronto Police and Gerstein Crisis Centre extend the 9-1-1 Crisis Call Diversion Pilot Project for another year", *Blue Line* (2 November 2022), online: Blue Line https://www.blueline.ca/toronto-police-and-gerstein-crisis-centre-extend-the-9-1-1-crisis-call-diversion-pilot-project-for-another-year/.

[71] TPS, "Mobile Crisis Intervention Team", online: https://www.tps.ca/organizational-chart/communities-neighbourhoods-command/field-services/community-partnerships-engagement-unit/mobile-crisis-intervention-team-mcit/.

[72] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020), recommendation 4 at 17, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[73] TPSB, "Virtual Public Meeting: December 15, 2020" (15 December 2020) at 19:00 online: https://www.youtube.com/watch?v=pKAkNc7lgk0 See also: TPSB, "Minutes of Virtual Public Meeting: December 15, 2020" (15 December 2020), Remarks from Chief Ramer at the Public Meeting of the Toronto Police Services Board, online: https://www.tpsb.ca/jdownloads-categories/send/57-2020/656-december-15.

[74] TPSB, "Minutes of Virtual Public Meeting: April 22, 2021" (22 April 2021), online: https://tpsb.ca/jdownloads-categories/send/59-2021/690-april-22.

[75] TPSB, "Report on Mobile Crisis Intervention Team (M.C.I.T.) Program Expansion Plan and 911 Crisis Call Diversion Pilot" (6 April 2021), online (pdf): https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R1b_4_MCIT_Expansion_plan_and_911_Crisis_Call_Diversion_Pilot.pdf.

[76] Adam Carter, "Toronto police temporarily suspending program for officers meant to assist on mental health calls," *CBC News* (20 October 2021), online: www.cbc.ca/news/canada/toronto/toronto-police-suspension-1.6218283.

[77] TPSB: June 22, 2022 (22 June 2022) at 9, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0.

[78] Auditor General of the City of Toronto, "Toronto Police Service – Audit of 9-1-1 Public Safety Answering Point Operations" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228260.pdf.

[79] Auditor General of the City of Toronto, "Review of Toronto Police Service – Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022) at 5, online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228234.pdf. The six event types include: check address, check well-being, unwanted guest, dispute, landlord and tenant dispute, noisy parties.

[80] Auditor General of the City of Toronto, "Review of Toronto Police Service – Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228234.pdf.

[81] TPSB, "Minutes of Public Meeting: June 22, 2022" (22 June 2022) at 9, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0; Auditor General of the City of Toronto, "Key Common Themes: Toronto Police Service – Audit of 9-1-1 Operations & Review of Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228367.pdf.

[82] Auditor General of the City of Toronto, "Toronto Police Service – Audit of 9-1-1 Public Safety Answering Point Operations" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228260.pdf; Auditor General of the City of Toronto, "Review of Toronto Police Service – Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228234.pdf; Auditor General of the City of Toronto, "Key Common Themes: Toronto Police Service – Audit of 911 Operations & Review of Opportunities to Support More Effective Responses to Calls for Service" (14 June 2022), online (pdf): https://www.toronto.ca/legdocs/mmis/2022/au/bgrd/backgroundfile-228367.pdf.

[83] TPSB, "Minutes of Public Meeting: June 22, 2022" (22 June 2022) at 11, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0.

[84] TPA, "Toronto Police Association Supports Findings by City of Toronto Auditor General: TPA Agrees Members Have Become 'Default Response'," *Globe Newswire* (22 June 2022), online: https://www.globenewswire.com/news-release/2022/06/22/2467469/0/en/Toronto-Police-Association-Supports-Findings-by-City-of-Toronto-Auditor-General.html.

Chapter 8 - Anti-racism policies, training, and evaluation: gaps in policies and procedures

Since 2010, the TPS and TPSB have implemented various programs, policies, and procedures to address racial profiling, racial discrimination, and anti-Black racism, including the:

- Police and Community Engagement Review (PACER)[1]
- TPS Equity, Inclusion and Human Rights (EIHR) unit[2]
- TPSB Anti-Racism Advisory Panel (ARAP)[3]
- TPSB Race and Ethnocultural Equity Policy (EEP)[4]
- TPSB Human Rights Policy[5]
- TPS Human Rights Strategy and Procedure[6]
- Project Charter between the TPS, TPSB and the OHRC[7]
- Neighbourhood Officer Program.[8]

This chapter addresses the need for a distinct TPS procedure and TPSB policy on racial profiling, and summarizes the changes to TPS training during the Inquiry period to address systemic issues. The chapter also identifies critical gaps in training that demonstrate the need for a comprehensive evaluation of all training.

Racial profiling

Evidence of systemic racial profiling can be found in an organization's formal and informal policies, procedures, and decision-making processes. Discretionary, less-formal processes combined with under-monitored, less-regulated decision-making provide opportunities for ambiguity, subjectivity, and racial bias.

Currently the TPSB and TPS do not have distinct policies or procedures on racial profiling.[9] The absence of such policies and procedures has been recognized as a factor that inhibits trust between Black communities and the police, and may contribute to incidents that can contribute to a breach of the *Human Rights Code*.[10]

The OHRC found no distinct definition of racial profiling in TPSB policies or TPS procedures, despite the existence of definitions for racial disparity, racial disproportionality, racial equity and inequity, intersectionality and racially biased policing in TPS procedures., Racial profiling is subsumed as a concept under racially biased policing. None of the TPSB policies or TPS procedures identify or prohibit activities that amount to racial profiling. Principles from case law are not articulated, and clear roles and responsibilities for officers, supervisors, the Chief of Police, and TPSB are not defined.

The absence of clear policies and procedures on racial profiling has been recognized as a factor contributing to racial discrimination in the United States.

California

California's Racial and Identity Policing Board (RIPB) was created by state legislation to eliminate racial profiling and improve racial sensitivity in law enforcement. Its mandate includes publishing an annual report with policy recommendations for eliminating racial profiling. It drew from a range of stakeholders such as law enforcement, academic, governmental and non-profit organizations with relevant expertise to compile best practices.[11]

The RIPB stated that "Foundational to any bias-free policing policy should be the inclusion of a clear written policy and procedure regarding an agency's commitment to identifying and eliminating racial and identity profiling if and where it exists."[12] The RIPB stated:

> Agencies should create a separate policy dedicated to bias-free policing that expressly prohibits racial and identity profiling. The policy should explicitly and strongly express the agency's core values and expectations when it comes to bias-free policing …
> The policy should clearly articulate when the consideration of race, ethnicity, disability and other protected characteristics is inappropriate in carrying out duties and when it is legitimate policing to consider them (e.g., when a specific suspect description includes race or other protected characteristics).[13]

Baltimore

The Civil Rights Division of the U.S. Department of Justice (DOJ) has linked the failure to create adequate policy mechanisms in Baltimore to racial disparities and low community trust.

The DOJ found the failure of the Baltimore Police Department (BPD) to have adequate policy mechanisms, among other things, to prevent discrimination, contributed to the large racial disparities in BPD's enforcement that "undermine the community's trust in the fairness of the police."[14]

For example, the BPD lacked a fair and impartial policing strategy until 2015, "despite longstanding notice of concerns about its policing of the City's African-American population." Before enacting its Fair and Impartial Policing policy in 2015, BPD only had a general prohibition against discrimination, which did not provide sufficient guidance to officers on how to conduct their policing activities in a non-discriminatory way, although it did provide a basis for the BPD to discipline officers.[15]

The TPSB and TPS

Numerous reports, including the TPSB's own *Police Reform* Report, have recognized the need for policies and procedures on racial profiling.

Recommendation 45 of the *Police Reform* Report recommends that the Chair and Executive Director of the TPSB explore and report on the Board's ability to enact a policy where all instances of alleged racial profiling and bias are investigated and addressed.[16]

The OHRC has previously recommended that its policy on eliminating racial profiling in law enforcement[xvii] be adopted by the TPSB and TPS. The TPSB has advised that it will consider this policy as it implements the recommendation from the *Police Reform* Report and is "open to the idea of considering the need for a stand-alone policy on racial profiling, based on the guidance recently provided by the OHRC."[18]

Given the large racial disparities the OHRC documented in the Inquiry's reports, it is imperative that the TPSB and TPS develop strong and coherent policies and procedures to address and combat racial profiling.

As noted above, evidence of systemic racial profiling can be found in an organization's formal and informal policies, procedures and decision-making processes. The less formal the process, and the less closely decisions are regulated or monitored, the more opportunity there is for ambiguity, subjective considerations, discretionary decision-making and racial bias to come into play.[19]

Other Ontario Police forces have begun to enact such policies. For example, the Peel Regional Police (PRP) has updated a directive on Racial Profiling and Bias-Based Policing in response to HRTO decision *Nassiah v. Peel (Regional Municipality) Services Board*.[20] The directive, which includes procedures, training, and accountability, will be used to familiarize all PRP personnel and address profiling and biased policing.

At a minimum, TPSB and TPS policies and procedures must include:

- a definition of racial profiling
- how racial profiling can be identified by TPS officers
- a strict prohibition on racial profiling, and
- accountability mechanisms, including disciplinary consequences for any breach of the policy.[21]

For the OHRC's recommendations on a racial profiling policy, see Recommendations 38 and 39.

Training

When the Inquiry began, the OHRC undertook to review TPS training material related to racial profiling and racial discrimination between the periods of January 2010 to January 2017.

The TPS provided various training resources to the OHRC that give snapshots of segments of training programs and outlines for courses.

The OHRC's review of these resources found several flaws in the TPS training, including:

- insufficient information on racial profiling, racial discrimination, and anti-Black racism

- inadequate explanation of key principles related to racial profiling, racial discrimination, and anti-Black racism, and

- lack of integration of key concepts into broader training programs.

Since our review of these initial documents, the release of the OHRC policy on eliminating racial profiling in law enforcement, the release of the Inquiry's interim reports *A Collective Impact* and *A Disparate Impact*, and subsequent engagements of the OHRC and the TPS and TPSB, the TPS has improved its training.

TPS documents received in 2023 show the TPS has made efforts to ensure their training addresses racial discrimination, racial profiling, and anti-Black racism. For example, the addition of active-bystander training, a dedicated anti-Black racism training developed by subject-matter experts, and scenario-based training on racial discrimination are now part of the In-Service Training. These are steps in the right direction.

2010 to 2017

Each year all TPS officers receive training through the Toronto Police College (TPC) called the In-Service Training Program (ISTP). Officers receive the ISTP training over three days.

Day 1 is dedicated to classroom learning. Days 2 and 3 focus on active training, which includes "dynamic simulations" where officers participate in scenarios involving live actors, firearms, Conducted Energy Weapons (CEW) training, and "judgment training" where officers participate in scenarios through interactive video simulations. The scaffolding approach to training is used, building on the knowledge learned from the ISTP from previous years.[22]
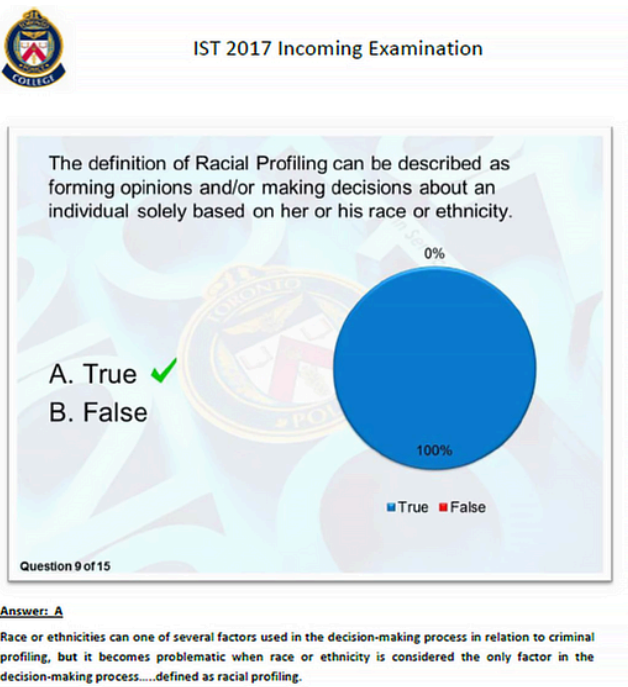
The OHRC found that the TPS's 2017 ISTP training resources did not sufficiently focus on racial profiling, racial discrimination, and anti-Black racism. While the training did include some units related to these concepts – such as presentations from Black communities about their lived experiences, a scenario involving a traffic stop of a Black man who felt he was the victim of racial profiling, and a scenario on anti-Muslim bias – anti-racism or discrimination concepts were not fully integrated within the entire course. The lack of integration appeared in several areas of the training. Dynamic simulations, for example, did not include scenarios where officers identify and address racial discrimination.

The training resources also failed to integrate racial profiling, racial discrimination, racial bias, and anti-Black racism concepts into core training sessions. For example, the following training materials provided to the OHRC did not mention these concepts:

- 2014 criminal offences study package for general investigators
- 2016 arrest and release training
- 2017 traffic generalist course
- 2017 provincial statutes course
- 2017 in-service training re use of force.

In addition, many of the documents demonstrated a significant lack of understanding of key principles. Key concepts, such as updated examples from case law and clear roles and responsibilities of officers and supervisors, were missing.

This example shows how the 2017 ISTP misstated a critical legal principle. Instead of recognizing established law that a prohibited ground of discrimination need only be one factor in adverse treatment for there to be discrimination, the training – delivered to all officers – erroneously indicated that racial profiling arises when race is the sole basis for an officer's decision.[23]

The error legitimized racial profiling by allowing an officer to use race and ethnicity as part of the rationale for developing an opinion about someone.

Subsequent improvements in training

Our review of documents from 2020 to 2023 demonstrates improvements to TPS training and discussions related to racial profiling, racial discrimination, and anti-Black racism. These changes were influenced by the:

- Loku inquest recommendations

- creation of the TPS's EIHR[24]

- TPSB's Policy on Race-Based Data Collection, Analysis and Public Reporting

- the OHRC policy on eliminating racial profiling in law enforcement, the Inquiry's reports *A Collective Impact* and *A Disparate Impact*, and subsequent engagements of the OHRC, and

- advocacy from racialized communities and the TPSB's *Police Reform* Report.

In 2018, the jury in the inquest into the death of Andrew Loku recommended that the TPS develop and implement annual or regular training at division and platoon meetings focusing on the equitable delivery of policing services, stating "The training should acknowledge the social inequities and challenges faced by racialized communities."[25] Topics should include bias-free service delivery and anti-Black racism, and should be provided by reputable, external educators and other experts.[26]

In 2020, the TPSB's *Police Reform* Report directed the TPS to "make permanent the current anti-Black racism training component of the annual re-training (civilians) and In-Service Training Program (uniform)."[27]

The report also directed the Chief of Police to create a permanent and stand-alone training course that includes:

> Anti-racism; anti-Black and anti-Indigenous racism; bias and implicit bias avoidance; interactions with racialized communities … an understanding of intersectionality; the importance of lived experience in developing understanding and compassionate service delivery.[28]

The TPS is also in the process of rolling out several new initiatives in their recruit training. As of December 2022, TPS recruits receive a five-day course called "Fair and Unbiased Policing." This course includes a review of human rights legislation, Black experiences, anti-oppressive practice, mental health and addictions, ethical inclusion leadership, emotional intelligence, and trauma and self-care and compassion delivery.[29]

Superintendent Frank Barredo of the TPC explained that the concepts from this course are interwoven throughout other areas of the recruits' training. For example, in dynamic simulation training, instructors assess recruits on their ability to demonstrate concepts learned in the classroom.[30]

As part of the Fair and Unbiased Policing course, recruits also receive active-bystander training, which instructs officers to intervene when witnessing misconduct. The training includes overcoming inhibitors to intervention, such as fear of reprisal, fear of embarrassment, and natural deference to seniority and obedience, and focuses on empathy. The training is scenario-based and recruits are evaluated based on instructors' observations.[31]

Training for officers through the ISTP has also evolved.

On Day 1 of training, the 2020 ISTP included a first-ever 30-minute module entitled "Anti-Black racism in policing and its effects."[32] Content included:

- the City of Toronto's Confronting Anti-Black Racism Unit's definition of anti-Black racism and the OHRC's definition of racial profiling
- Canadian historical roots of anti-Black racism
- common anti-Black stereotypes
- research supporting "Black threat implicit bias," and
- examples of racial profiling in suspect selection and through third-party information.[33]

Senior management within the TPS indicated that anti-Black racism training was integrated throughout the three days of the 2020 ISTP, including in use-of-force training.[34] However, based on the OHRC's review, the second and third days (simulation training) did not appear to

integrate concepts of racial profiling, racial discrimination, racial bias, or anti-Black racism in stop, search and questioning activities, charges and arrests, and use of force.[35]

The 2020 ISTP did include a dynamic scenario where officers are responding to a radio call about a suspicious person. The training manual states that learning points include "the importance of maintaining bias free encounters," "the value of being able to identify criminal profiling versus bias based profiling" and the requirement that "interactions never violate the *Human Rights Code*." However, race or other prohibited grounds of discrimination are not explicitly part of the scenario.[36]

The EIHR unit also developed training to implement TPSB's policy on Race-Based Data Collection, Analysis and Public Reporting. This was done in consultation with Dr. Grace-Edward Galabuzi, an Associate Professor in the Department of Politics and Public Administration of Toronto Metropolitan University, who has extensive experience with anti-racism and social justice.[37]

In February 2020, all senior officers at the rank of inspector and above, and all civilian managers, received a half-day training on anti-Black racism from the City of Toronto's Confronting Anti-Black Racism Unit.[38]

In 2021, the TPS enhanced the anti-Black racism training in the ISTP. The course was developed by a subject matter expert and contained instructions on:

- human rights terminology, including the OHRC's definition of racial profiling, implicit bias and ways to recognize and address it
- rebuilding trust with Black communities
- bias by proxy, and
- the impact of anti-Black racism.

The course included video scenarios and discussion of anti-Black racism.[39] Because of the COVID-19 pandemic, the training was delivered by an e-learning course.

The 2022 ISTP included training on bias, anti-Black racism, racial profiling, and racial discrimination. It was delivered in person and builds on some of the concepts discussed in the 2021 course. Topics included intersectionalism,[40] being trauma-informed, and the concept of privilege.[41] The TPS advised the OHRC that officers were evaluated through knowledge checks and classroom discussion by instructors.[42] However, they did not provide any grading schemes, and the OHRC did not find any learning goals in the course training similar to dynamic simulations.

In March 2023, select staff of the OHRC participated in a full-day TPS interactive training at the TPC. The event consisted of samples of various training sessions that TPS officers receive in ISTP, including dynamic simulations. Subsequently, the TPC provided the OHRC with additional details of some components of their 2023 in-service training.

Day 1 of the 2023 ISTP includes lectures in:

- police trauma-informed resiliency
- Indigenous experiences
- incident response
- rights to counsel under the *Charter*
- peer intervention, and
- centering Black experiences.

Days 2 and 3 focus on active training, including dynamic simulations and judgment training as described above.[43]

The 2023 ISTP takes steps to integrate knowledge of anti-Black racism into other areas of training, but, as discussed below, further work needs to be done. The dynamic simulations the OHRC participated in involved scenarios requiring officers to draw on a number of areas covered on Day 1 of their training, including de-escalation skills, use-of-force options, knowledge of legislation and regulations, mental health, referrals to community organizations, and trauma-informed practice.[44]

Both dynamic simulations and judgment training video scenarios are followed by a debriefing session, and each scenario includes a list of criteria of anticipated responses and learning points that instructors use to evaluate officers.[45] Superintendent Barredo also stated that recruits received the same scenarios as active officers in the 2023 ISTP.[46]

Within the ISTP, the 2023 anti-Black racism course, Centering Black Experiences, is 80 minutes long (in contrast to the 30 minutes received for the 2020 ISTP). It includes education, history, and some practical guidance for officers interacting with Black persons in a trauma-informed manner.

One of the main themes of this training is racial trauma. It recognizes the longstanding government policies, histories, legacies, and erasure of people of African descent in Canada, and the current psychological and physiological impacts of racial trauma on Black Canadians today. It teaches trauma-informed practice principles, de-escalation methods, and practical tools and strategies to name and reframe harmful stereotypes and support equitable communication.[47] It also includes a list of culturally responsive mental health supports for Black communities to which officers can refer people.[48]

A new and welcome addition to the ISTP is the focus on peer intervention. The goals of the course include building a "healthy culture that expects and accepts intervention, at all ranks, to prevent mistakes, misconduct and to promote wellness."[49] The course discusses circumstances that may require intervention, including misconduct, unethical and discriminatory behaviour, racism, bullying, and microaggressions.

The training discusses intervention techniques that include non-verbal communication, verbal de-escalation, calling for backup and, if necessary, physically restraining a fellow officer.[50] Examples of circumstances for intervention explicitly include racism and discrimination.

The above steps demonstrate a positive shift in training following the start of the Inquiry. However, some gaps in training remain that must be addressed.

Gaps in training

Integrating anti-Black racism into other areas of training

More needs to be done to ensure that race, including anti-Black racism, is woven throughout the ISTP. It is not enough to talk about these concepts in the classroom, without ensuring that these discussions continue in every aspect of the simulation training.

In the 2023 ISTP, anti-Black racism was only involved in one scenario – a judgment training video that required officers to draw on what they learned from their anti-Black racism classroom training. The scenario encouraged officers to examine stereotypes and bias both from their own perspectives as well as that of the Black complainant. While other concepts from Day 1 like de-escalation and mental health were integrated throughout the ISTP, anti-Black racism was only found in one simulation shared with the OHRC. In addition, other forms of racial and or Indigenous stereotypes were not found in the documents reviewed.

The OHRC participated in a scenario that mimicked the shooting death of Andrew Loku. Yet, our review of the training documents did not identify any discussion of anti-Black racism in relation to the scenario.

Intersection of race and mental health

The TPS's training engages elements of mental health and race, but as separate concepts. More can be done to address the unique issues arising at the intersection of race and mental health.

In the Centering Black Experiences course, for example, the materials cover racial stress and trauma, and list culturally responsive resources, but do not cover the topic of mental health disorders at the intersection of race.[51]

Similarly, TPS's Crisis and Mental Health Awareness training does not discuss the concept of race, and culturally responsive resources are not included in the list of resources.[52]

As mentioned above, one of the dynamic simulations includes a scenario that appears to mirror the circumstances around the death of Andrew Loku: a person in crisis, holding a blunt object, in an empty hallway with the officer positioned at one end. However, the materials we reviewed in relation to this scenario – including the learning objectives and teaching points provided to instructors – do not address race. Another scenario mimicked the shooting death of Sammy Yatim, yet race and mental health were not discussed in the materials related to the scenario.

One of the dynamic simulation scenarios did address the intersection of 2SLGBTQ+ and mental health. However, the judgment training video scenario (the only one that involved race) did not involve mental health or any other intersectionality. Given the death of Andrew Loku, and other Black people experiencing mental health disorders who have died during interactions with police, it is critical that TPS training and simulations include a specific and detailed discussion of this intersection.[53]

Evaluation

Effective evaluation includes assessing an individual officer's understanding of relevant concepts from training, and whether anti-racism training as a whole has an impact on officer behaviour or community outcomes (e.g., whether initiatives reduce racial disproportionalities and disparities). The TPS should take steps to strengthen evaluation of officers and evaluation of all of its training programs.

Officer evaluation

The ISTP is a series of courses over three days that all officers take each year. The courses vary in content and format. As noted above, officers are required to attend lectures on anti-Black racism and officer well-being, participate in firearms training, and undergo dynamic simulation training.

Each course evaluates its attendees differently, if at all. For example, we were advised by the TPC that in the firearms training, officers are tested on their accuracy by evaluating how many times they hit a target. They must pass a threshold to continue to use their firearm.[54]

For the classroom components of the ISTP, there is no standardized, objective method of evaluating an officer on each learning objective. Superintendent Barredo stated that officers are evaluated on their classroom knowledge during other areas of training, such as dynamic simulation training where they are asked to physically demonstrate and explain actions that reflect their classroom learning.[55]

In response to the Loku recommendations, the TPS noted that:

> In 2018, the Service implemented an incoming knowledge check on day one of I.S.T.P. … Upon completion of day one, officers were required to complete a 14 question outgoing examination. When officers failed to show competence in certain areas, they were required to receive additional training in the identified area. In addition[,] failure to show competence in the remaining two days … resulted in officers having their use of force options removed/suspended[.]"[56]

However, the material provided for the 2023 ISTP does not appear to have objective criteria that an officer must complete to pass each component of the ISTP. Instead, there is a list of general learning objectives and teaching points. The evaluation standard states:

> The instructor will evaluate the learner and their ability to deal with the situation. The learner should display a high-level confidence and competence when faced with this scenario. The learner is expected to abide by all service policies and procedures as well as meet all legal requirements.
>
> - Instructor observation
> - Debrief of scenario
> - Discussion and feedback from students
> - A thorough debrief was held at the end of each scenario to ensure that learning objectives were retained.

It is imperative that the TPS consider implementing standardized and objective testing throughout ISTP. Officers should be required to pass a rigorous evaluation and demonstrate that lessons have been absorbed and retained.

Evaluation of training in reducing racial disparities

In addition to evaluating officers, training in anti-Black racism, racial profiling, and racial discrimination must be evaluated for its effectiveness to determine whether it has helped to reduce racial disparities. This level of evaluation was also recommended by the jury of the coroner's inquest into the death of Andrew Loku.[57]

To provide more public interest remedies and to capitalize on ongoing efforts by the TPS to address human rights concerns, the TPSB and TPS partnered with the OHRC to launch the Human Rights Project Charter (Project Charter) in May 2007. The Project Charter was designed to apply a human rights lens to all aspects of policing.[58]

In 2014, an independent evaluation of the Project Charter recommended that the Toronto police:

- Ensure that subsequent strategies or initiatives in human rights are based on a strong logical model with evaluation tools built in. Establish baseline data prior to the implementation of new initiatives to allow complete assessments.
- Regularly evaluate all existing diversity related training to ensure human rights elements are pertinent and effective. Include a tracking system to measure levels of participation in all mandatory and elective courses.[59]

The evaluation report also stated that "evaluation of the impact of training on behaviour is required. Implementing feedback loops and evaluation strategies will ensure continuous revisions and improvement to training."[60]

TPS training on anti-Black racism and anti-racial discrimination has not been effectively evaluated. Officers taking part in such training have also not been effectively evaluated.

Before 2017, it appears that there was no external evaluation of the effectiveness of training in racial profiling, racial discrimination, or anti-Black racism, and its impact and outcomes on the community.[61]

At an October 11, 2022 TPSB meeting, Superintendent Barredo stated that the TPC had requested an external review that would conduct this level of evaluation, but they did not receive any bids. The TPSB passed a motion for the Chief of Police to report back in Q1 2023 on "[t]he efforts undertaken to attempt to retain an expert third party resource to externally evaluate training programs offered by the Toronto Police College."[62]

While improvements have been made over the last several years, gaps remain that must be addressed in order to ensure that training on anti-Black racism and racial discrimination results in meaningful change.

For the OHRC's recommendations on training, see Recommendations 40–49.

Chapter 8 Endnotes

[1] TPSB, "Making Progress Together on Police Reform by the Toronto Police Services Board and the Toronto Police: A Six-Month Update," online: https://tpsb.ca/mmedia/news-release-archive/listid-2/mailid-221-81-recommendations-six-month-update.

[2] TPS, "Equity Inclusion & Human Rights", online: https://www.tps.ca/organizational-chart/corporate-support-command/human-resources-command/equity-inclusion-human-rights/.

[3] TPSB, "Anti-Racism Advisory Panel (ARAP)", online: https://www.tpsb.ca/advisory-panels/24-panels-and-committees/94-arap.

[4] TPSB, Race and Ethnocultural Equity Policy (15 November 2010), online: https://www.tpsb.ca/policies-by-laws/board-policies/176-race-and-ethnocultural-equity-policy.

[5] TPSB, Policy on Human Rights (17 December 2015), online: https://www.tpsb.ca/policies-by-laws/board-policies/165-human-rights.

[6] TPSB, "Minutes of Public Meeting: September 17, 2015" (17 September 2015), at 26–27 online: https://tpsb.ca/jdownloads-categories?task=download.send&id=183&catid=7&m=0.

[7] OHRC, "Backgrounder – Project Charter: Ontario Human Rights Commission / Toronto Police Service / Toronto Police Services Board", online: https://www.ohrc.on.ca/en/backgrounder-project-charter-ontario-human-rights-commission-toronto-police-service-toronto-police.

[8] TPS, "Neighbourhood Community Officer Program", online: https://www.tps.ca/neighbourhood-community-officer-program/.

[9] OHRC interview of Suelyn Knight, Manager, EIHR unit, TPS (5 March 5, 2020); responses of the Toronto Police Services Board to written questions asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19.

[10] *Nassiah v Peel* (Regional Municipality) Services Board, 2007 HRTO 14 at paras 208–212.

[11] California Department of Justice, *Racial & Identity Policing Advisory Board Annual Report*, (2019) at 2, online (pdf): https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf.

[12] California Department of Justice, *Racial & Identity Policing Advisory Board Annual Report*, (2019) at 28, online (pdf): https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf.

[13] California Department of Justice, *Racial & Identity Policing Advisory Board Annual Report*, (2019) at 28, online (pdf): https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf.

[14] Civil Rights Division of the U.S. Department of Justice, "Investigation of the Baltimore City Police Department" (10 August 2016) at 8 and 62, online: www.justice.gov/crt/file/883296/download.

[15] Civil Rights Division of the U.S. Department of Justice, "Investigation of the Baltimore City Police Department" (10 August 2016) at 8, 47, 62, 68 and 129, online: www.justice.gov/crt/file/883296/download.

[16] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety at 7 and 46 (10 August 2020), online: https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[17] OHRC, Policy on eliminating racial profiling in law enforcement (Toronto: Ontario Human Rights Commission, 2019), online (pdf): https://www3.ohrc.on.ca/sites/default/files/RACIAL%20PROFILING%20Policy%20FINAL%20for%20Remediation.pdf.

[18] Responses of the TPSB to written questions at 30, asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19.

[19] OHRC, Policy on eliminating racial profiling in law enforcement (2019) at 4.1.2., online: Ontario Human Rights Commission www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement#_Toc17977371.

[20] *Nassiah v. Peel (Regional Municipality) Services Board* (2007) HRTO 14

[21] Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014) at 43, online (pdf): https://www.torontomu.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

[22] TPC, "Overview of In-service Training to the Ontario Human Rights Commission" (23 March 2023).

[23] *Moore v British Columbia (Education),* 2012 SCC 61 at para 33; *Stewart v Elk Valley Coal Corp*, 2017 SCC 30 at para 69 [*Elk Valley*]; *Shaw v Phipps*, 2010 ONSC 3884 at paras 11–15, 76, aff'd *Shaw v Phipps*, 2012 ONCA 155; *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 53–62 and 111–25; *Québec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras 40–54.

[24] The EIHR unit replaced the former Diversity Management unit. The EIHR unit's current operational priorities include the TPS's race-based data collection strategy; gender, diversity and trans inclusion project; and "systemic review of recruitment to identify any barriers in being able to recruit from all communities." The EIHR unit is also supporting the Toronto Police College with diversity, inclusion and human rights training. It will also conduct an enterprise-wide accessibility audit and develop a TPS equity strategy. See OHRC interview of Suelyn Knight, Manager, EIHR Unit (5 March 2020); TPSB, "Minutes of Virtual Public Meeting: October 22, 2020" (22 October 2020), Report from Chief Ramer regarding "Toronto Police Service Board's Equity, Inclusion and Human Rights Unit – Progress Update on the Unit's Work" (14 September 2020) at 77, online (pdf): https://www.tpsb.ca/jdownloads-categories/send/32-agendas/637-2020-oct-22-agenda; report from Chief Saunders to the TPSB re Equity, Inclusion and Human Rights Unit Structure (27 March 2019) (Minutes of the Public Meeting of the Toronto Police Services Board, May 30, 2019), see Equity, Inclusion & Human Rights Unit Structure minutes and report, online: https://tpsb.ca/jdownloads-categories/send/54-2019/613-may-30.

[24] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Andrew Loku (30 June 2017) at Recommendation 2.

[26] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Andrew Loku (30 June 2017) at Recommendation 2.

[27] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Jim Hart, Chair, regarding Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020), Recommendations 52 and 53 at 47, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[28] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Jim Hart, Chair, regarding Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020), Recommendations 52 and 53 at 47, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

[29] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the Toronto Police College (29 November 2022).

[30] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the Toronto Police College (29 November 2022).

[31] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the Toronto Police College (29 November 2022).

[32] Letter from the TPS to the OHRC arising from the interview of Suelyn Knight, Manager, EIHR Unit (13 June 2020).

[33] TPC, Learning Development and Standards section – 2020 In-Service Training Program Day One Course Training Standards; training slide presentation and instructor's notes re anti-Black racism and its effects on policing.

[34] In an interview with Suelyn Knight, Manager, EIHR Unit (5 March 2020), she stated: "This year, there's anti-Black racism [training] throughout the three days, instead of the just one day – to recognize anti-Black racism training on the academic side [with] theory for one day and on use of force for two days; and putting that thinking into action - through scenarios, videos, and conversations on de-escalation."

[35] De-escalation and dealing with people in crisis appear to be integrated into use of force/simulation training. TPC, In-Service Training Program – Day 2 and Day 3 Course Training Standard (2020); TPS, In-Service Police Training Manual (2020).

[36] TPS, In-Service Police Training Manual (2020).

[37] TPSB, "Minutes of Virtual Public Meeting: October 22, 2020" (22 October 2020), Report from Chief Ramer regarding "Toronto Police Service Board's Equity, Inclusion and Human Rights Unit – Progress Update on the Unit's Work" (14 September 2020) at 77, online (pdf): https://www.tpsb.ca/jdownloads-categories/send/32-agendas/637-2020-oct-22-agenda.

[38] OHRC interview of Inspector Stacy Clarke (5 March 2020).

[39] TPS, E-Learning Module: Let's Talk How Anti-Black Racism Affects Impartial Policing (2021).

[40] Intersectionalism is the terminology used by the TPS in its ISTP training.

[41] TPS, 2022 In-Service Training Program for Anti-Black Racism; The Black Experiences slide deck.

[42] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the Toronto Police College (29 November 2022).

[43] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023).

[44] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023).

[45] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023).

[46] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the Toronto Police College (29 November 2022).

[47] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023).

[xlviii] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023) at 33.

[48] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023) at 15.

[49] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023) at 46.

[50] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023).

[51] TPC, Crisis and Mental Health Awareness training (23 March 2023).

[52] TPC, Overview of In-Service Training to the Ontario Human Rights Commission (23 March 2023) at 17–19.

[54] TPS, Incident Response Training (2023) at 51.

[55] OHRC interview of Staff Sergeant Patrick Coyne and Superintendent Frank Barredo of the TPC (29 November 2022).

[56] TPS, "Police Reform Recommendation Summary – PRR#77 (LOKU)" at 6–7, online (pdf): https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R77_-_Inquest_into_the_death_of_Andrew_Loku_-_Report_to_TPSB.pdf.

[57] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Andrew Loku (30 June 2017) at Recommendation 2.

[58] Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014) at vii, online (pdf): https://www.torontomu.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

[59] Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014) at 44, online (pdf): https://www.torontomu.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

[60] Diversity Institute at Toronto Metropolitan University (formerly Ryerson University), "Evaluation of the Human Rights Project Charter" (February 2014) at 32–33, online (pdf): https://www.torontomu.ca/content/dam/diversity/reports/HRPC_Report_WEB_2014.pdf.

[61] Letter from the TPS to the OHRC arising from the interview of Christopher Kirkpatrick (3 September 2020). For example, officers were not evaluated on the Fair and Impartial training program and there was no evaluation of the impact of the training on officer behaviour or community outcomes.

[62] TPSB, "Minutes of the Public Meeting: October 11, 2022" (11 October 2022), online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=754&catid=62&m=0.

Chapter 9 - Accountability and monitoring mechanisms: gaps in data management, performance review, and public transparency

As detailed in Chapter 8, it is critical that the TPSB and TPS have a clear and distinct policy and procedure on racial profiling. While this is an important step to fight discrimination, more is required. For policies and procedures to make real change, there must be strong accountability mechanisms in place to monitor and analyze their effect.

Accountability and monitoring mechanisms ensure that organizations effectively:

- collect objective data about their practices
- discuss and analyze the data in a transparent manner, and
- act in response to that analysis.

Data collection is a key component of an effective accountability system. The TPS must appropriately and effectively collect data related to racial profiling and discrimination from a variety of sources. The collection and resulting data must be transparent and available to the public.

Senior TPS officers and the TPSB must review and analyze the data to fulfill their supervisory and oversight functions. As reflected in our recommendations, there must be independent analysis and evaluation of the data to inform the TPS and TPSB about events, trends, and issues within the community and their impact on the effectiveness of police services.

Where the data indicate progress, the contributing factors should be recognized and applied more broadly. Similarly, where the data suggest concerns, the TPSB and TPS senior officers must respond quickly to address them and do so effectively.

Turning to accountability more broadly, when officers are found to have engaged in discriminatory behaviour (whether through data analysis or otherwise), there must be a consequence. If officers can engage in racial profiling and/or discrimination with impunity, then the policies and procedures are meaningless, and the relationship between the TPS and Black communities will not improve. The absence of

appropriate discipline, when warranted, helps perpetuate patterns of racism and misconduct, and contributes to the mistrust of police among Black people.

The OHRC finds that there are significant gaps in the TPS and TPSB's accountability mechanisms in relation to anti-Black racism, racial profiling, and racial discrimination.

Data collection systems

Prior to 2019, the TPS and TPSB did not implement data collection systems or compile or analyze existing data to identify, monitor, and address racial profiling or racial discrimination of Black people – despite many documented concerns about anti-Black racism and recommendations to collect race-based data.[1]

In September 2019, after having conducted significant community engagement on race-based data collection, the TPSB adopted its Policy on Race-Based Data Collection, Analysis and Public Reporting (RBDC Policy). The policy requires the police to collect data on an individual's race in a wide variety of interactions, including stops, questioning and searches, Use of Force Reports, and charges, arrests, and discrete interactions between an individual and an officer that lead to a "decision that determines an outcome for the individual."[2]

On January 1, 2020, the TPS began collecting race-based data on Use of Force Reports and strip searches in line with Phase 1 of the RBDC Policy.[3]

On January 1, 2021, the TPS began collecting race-based data on arrests, apprehensions, releases and youth diversions under Phase 2 of the RBDC Policy.[4]

In June 2022, the TPS released its analysis on race, use of force, and strip searches.[5]

These are significant steps forward. However, some limitations in the TPS's data collection need to be addressed. In particular, the scope of the Phase 2 data collection is too narrow.

Scope of Phase 2 data collection

As noted above, Phase 2 began in January 2021 with the collection of data in apprehensions, arrests, charges, releases, and youth diversion. However, Phase 2 does not include data collection for all stops,[6] in particular:

- investigative detentions
- protective searches (formerly Level 1 searches),[7] and
- frisk searches (formerly Level 2).[8]

Phase 2 data collection also does not include all use-of-force incidents. Specifically, it does not include use of force resulting in physical injury that does not require medical attention.

The OHRC notes that the TPS's analysis of race-based data on use of force included "persons in crisis calls for service," but does not appear to broadly capture whether the person involved had a noted history of mental health issues or was perceived to have a mental health disability.[9]

The community chairs of the Mental Health and Addictions Advisory Panel (MHAAP) suggested that race-based data be collected from crisis services providers from the Community Crisis Support Services Pilot. They also stressed the importance of collecting race-based and mental health data to examine intersectionalities (e.g., in conducted energy weapon use and *Mental Health Act* apprehensions).[10]

In September 2021, the TPS advised it was working on updating its systems' capacity and resource workflow to collect stop data, including both traffic and pedestrian stops, and lower-level uses of force.[11]

The scope of data collection should be expanded. The current scope is too narrow and does not address longstanding concerns about systemic anti-Black racism, racial profiling, and racial discrimination in all stops and all uses of force. Nor does it allow for sufficient monitoring and accountability.[12]

There must be human rights-based data collection, analysis, and public reporting on the full range of police–civilian interactions, including all stop and search activities, traffic and pedestrian stops that do not result in formal action, charges, arrests, releases, and use of force.[13]

This expansion is consistent with the intent of the TPSB's RBDC Policy, and the *Anti-Racism Act*. It is also supported by the TPA465F[14] and the Information and Privacy Commissioner (IPC).[15]

Race-based data should be collected when people are not charged, and where criminal incidents are "cleared otherwise" as defined in the Uniform Crime Reporting (UCR) Survey. "Cleared otherwise" means there was a criminal offence and a chargeable suspect, but the suspect was ultimately processed by other means. For example, the police may have decided not to charge, or diverted the case through an alternative mechanism, or charged under a regulatory statute instead of the *Criminal Code*.

Race-based data collection by the TPS on "cleared otherwise" cases will provide greater insight into the use of TPS discretion and how discretion is exercised.

This broader scope of data collection should be implemented not only by the TPS, but across Ontario. A province-wide approach to comprehensive data collection, analysis, and public reporting is important. Consistent with the OHRC's *Framework for change to address systemic racism in policing*, the TPSB should urge the provincial government to mandate province-wide race-based data collection, analysis, and reporting across the spectrum of officer activities, including all stop and question practices, charges and arrests, and uses of force.[16]

For the OHRC's recommendations for data collection, analysis, and public reporting, see Recommendations 52–60.

Early intervention systems and the use of race-based data for officer accountability

Early intervention systems (EIS) – also known as early warning systems – involve a data-driven management process. EIS allow supervisors to identify officers who engage in problematic behaviour, and to intervene through counselling, education, and additional training.

EIS have been identified as a positive strategy for reducing or preventing racial profiling, by using race-based data to alert supervisors to potential racial profiling and racial discrimination by individuals and platoons/units/divisions.

The idea behind EIS is that officers may not recognize problematic behaviour unless it is identified and brought to their attention by supervisors. Once identified, officers have the ability to improve their performance and correct the conscious or unconscious behaviour, such as racially biased traffic enforcement.[17]

EIS can review trends in officers, partnerships, units, and geographic areas to identify issues and inform improvements through policy changes, supervision, education and training, and accountability.[18]

EIS have been recommended as a promising practice by the International Association of Chiefs of Police, the U.S. Department of Justice, and many policing experts.470F[19] In the United States, approximately 65% of police agencies with 250 or more officers had an EIS as of September 30, 2007.[20]

The TPS and EIS

In 2013, the *Police and Community Engagement Review* (PACER Report)472F[21] recommended the implementation of EIS related to bias and racial profiling.[22]

The PACER Report also recommended that the TPS should:

> Proactively design and conduct unit level reviews of performance trends and indicators that may relate to systemic and/or individual bias, prejudices and/or racial profiling. This may be accomplished by comparative analysis of Officers and unit performance. Recognizing such analysis does not in itself indicate bias-based policing, the trend indicator should be utilized as part of a more comprehensive analysis of the individual or unit level performance to ensure consistency with the unit and Service priorities.

The report further recommended that the TPS Professional Standards Unit "develop new risk thresholds specifically designed and implemented with respect to bias and racial profiling," and "design and conduct reviews at both the Unit and Professional Standards Unit level, examining all ranks of the Service to proactively assess and address Officer performance trends and indicators that may relate to bias, prejudices and/or racial profiling."[23]

As of 2020, the development of new risk thresholds was still in progress,[24] and there appear to have been no further developments since that time.

The TPS previously implemented a limited form of EIS in 2008, which has since been updated and revised.[25] However, at time of writing, the EIS does not include race-based data.[26] The performance indicators do not appear to capture bias, prejudice, or racial profiling, but do include complaints.[27]

In August 2020, the TPSB adopted the 81 recommendations from its report on *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (Police Reform* Report).[28]

Recommendation 45 directed the Chief to report by November 2020 on:

   a. How the TPS identifies police officers who are repeated subjects of conduct complaints or negative findings by the courts, or those who disproportionately use force, even where no specific instance amounts to allegations of misconduct;
   b. How identified officers are monitored for compliance with TPS policy and procedure and receive additional training where necessary; and
   c. How the TPS determines what other interventions are appropriate or required for officers that are identified as part of the service's efforts as per a) and b).

On November 4, 2020, then-Interim Chief James Ramer presented his report to the TPSB. The report confirmed that the EIS performance indicators do not include indicators of racial discrimination or racial profiling by individual officers and platoons/units/divisions, and important and related indicators described in detail in the OHRC's recommendations in this report.480F[29]

It is imperative that the TPS fully adopt a comprehensive EIS that includes indicators of racial discrimination/profiling.

For the OHRC's recommendations for effective EIS, see Recommendations 65, 66, 67, and 95.

EIS and officer discipline

Although not intended to be disciplinary, EIS do not preclude discipline for individuals' repeated negative behaviour. For example, the LAPD has disposition options for interventions that include no action, commendation, informal meeting, training, modified field duties, directed health and wellness referral, notice to correct, and a complaint.[30]

Discussions at the OHRC policy roundtable also supported using race-based data for remedial or disciplinary purposes.[31]

TPS objections to the use of such data to investigate individual misconduct are not sustainable. On June 15, 2022, then-Interim Chief Ramer stated that the "privacy commission" and the *Anti-Racism Act* require that race-based data be anonymized and therefore prevent the TPS from investigating individual officer conduct.[32] However, the IPC of Ontario stated:[33]

> Based on the information available to date, it is our view that <u>neither</u> the [*Municipal Freedom of Information and Protection of Privacy Ac*t] nor the [*Anti-Racism Act*] prevent police service boards or police services from using race-based data or employee information to supervise, discipline, train, or monitor police divisions.[34]

Indeed, the Data Standards for the Identification and Monitoring of Systemic Racism created under the *Anti-Racism Act* specifically contemplates that the failure to monitor the impact of discretionary decision-making may itself constitute a form of systemic racism where it leads to significant racially inequitable outcomes.[35]

However, the TPSB's RBDC Policy prohibits race-based data from being used for performance management.[36] Therefore, the TPS and TPSB have been unable to effectively identify, monitor, or address racial profiling or racial discrimination by individual officers.

On June 22, 2022, the TPSB passed a motion:

1. Directing the Chief of Police to assess how the Service's approach to race-based data collection and analysis can be modified to enhance the Service's ability to identify, investigate and address specific instances of potential inequitable policing, including with respect to Use of Force, strip searches and other interactions, and to report back to the Board by Q4 2022 with the results of this assessment and any next steps, as well as areas for consultation with the Police and Community Engagement Review, other community stakeholders, and the Toronto Police Association; and
2. Directing the Executive Director and Office of the Police Services Board to undertake a review of the Board's Race-Based Data Collection, Analysis and Public Reporting Policy, in consultation with the Board's Anti-Racism Advisory Panel, key stakeholders and community partners, and to report back to the Board by Q2 2023 concerning any suggested revisions to the Policy, and in particular, revisions that relate to the Chief of Police's assessment in item 1.[37]

However, in his April 28, 2023 update to the TPSB on these and several other motions related to the RBDC Policy, Police Chief Myron Demkiw noted that "The challenge is that attempting to identify trends based on too little information (too few data points using the Use of Force report alone) is an unreliable means of indicating bias or … identifying a pattern of racism or racial bias." He further stated:

The early risk intervention process involves identifying use of force trends that can be used to initiate a broader review, leveraging body-worn and in-car camera systems, notes, and other reports such as complaints data. As there are now mandatory reviews of this nature, the amount of information available about an incident is increasing. It is in this mandatory review that the appropriateness of the intervention and any indication of racism or bias can be determined. Conversation in the town halls centres on making the process more transparent and robust; ensuring events are captured; and on actions the Service should take in the event of an abuse of authority.[38]

While mandatory reviews of body-worn and in-car camera systems, notes, and other reports such as complaints data are critical, it is not clear at this time how they will be incorporated as data that can be used in an EIS for performance management. Based on concerns that there are not enough data points in use-of-force reports, the EIS should incorporate indicators of racial discrimination or racial profiling by individual officers and platoons/units/divisions, and other related indicators, which are currently missing.

The April 28, 2023 update did not address the second item from the TPSB's motion.

Issues with performance analysis and management of police services, including EIS, exist across Ontario, a fact appropriately recognized by the TPSB. On June 22, 2022, the TPSB passed a further motion to:

Request that the Ministry of the Solicitor General create a new Adequacy and Effectiveness Standard, under the *Community Safety and Policing Act*, 2019, that mandates a consistent approach to performance analysis and management of police services that is designed to identify inequitable policing, including in relation to Use of Force, and which includes an early-warning system [EIS] built to identify instances where systemic bias may be operating, and a requirement that supervisory staff take appropriate action.[39]

The OHRC agrees that a province-wide approach to EIS informed by race-based data is required. Consistent with the OHRC's *Framework for change to address systemic racism in policing*, the TPSB should urge the provincial government to mandate the implementation of EIS consistent with its recommendations.

In his April 28, 2023 update on this motion, Chief Demkiw stated that the TPS had "engaged with the Province to improve and introduce enhanced use-of-force reporting requirements that support identifying and addressing systemic patterns and trends to advance racial equity in policing."[40] He also noted that the provincial government indicated its intention to convene a working group to develop an anti-racism strategy for policing in Ontario, which includes discussions of priority areas for race-based data collection and reporting.

In addition, following the implementation of the updated Use of Force Report, a Race-Based Data Working Group was formed by the Ontario Association of Chiefs of Police, and discussions around how the Ministry of the Solicitor General would be involved were ongoing.[41]

The OHRC looks forward to the results of the TPS's engagement with the Province to improve and introduce enhanced reporting requirements that lead to a consistent province-wide approach to an EI system.

For the OHRC's recommendations on the use of race-based data in EIS and officer discipline, see Recommendations 61, 68, and 69.

Body-worn cameras

Between February 2015 and March 2016, the TPS conducted a body-worn camera (BWC) pilot project.[42]

On August 18, 2020, the TPSB approved a contract to roll out BWCs to all front-line officers. The TPSB directed the Chief to ensure that BWCs were not deployed fully to all front-line members until the Board approved a BWC policy and the relevant Service Procedures had been developed and/or amended to ensure consistency with the Board policy.[43]

On November 24, 2020, the TPSB passed a Policy on Body Worn Cameras. The purpose of the policy includes enhancing the commitment to anti-racist, bias-free service delivery by the TPS. It also directs the Chief of Police to establish a framework for reviewing the recordings by supervisors on a regular basis to, among other things, identify and address evidence of explicit or implicit bias and discrimination.495F[44]

By the end of 2021, 2,111 BWCs were deployed to front-line officers, which amounted to 92% of front-line officers.[45]

In June 2022, the TPSB directed the Chief of Police to:

> Implement mandatory reviews by supervisors of body-worn camera footage and in-car camera system footage for all Use of Force incidents, as contemplated by the new Service Procedure, and to initiate a disciplinary investigation where excess force is deemed to have potentially occurred.[46]

On July 6, 2022, the TPS issued a Procedure 15-20, Body Worn Camera. It requires that supervisors review a video from each BWC-equipped police officer a minimum of once per month and conduct regular random reviews of videos to:

- Ensure officers are using the BWC in accordance with the law and BWC training;
- Determine if any additional training is required;
- Identify material that may be appropriate for training; and
- Comply with section 15 of the Board Policy on Body Worn Cameras.[47]

Section 15 of the Board Policy on Body Worn Cameras states:

> The Chief of Police, in consultation with the Information and Privacy Commissioner of Ontario and other relevant stakeholders, will develop Procedure(s) that:

> 15. Establish a framework for reviewing of recordings by supervisors on a regular basis to:

> > a. Ensure compliance with Procedures;
> > b. Identify and address evidence of explicit or implicit bias and discrimination; and
> > c. Determine the need for additional training or other measures.

The IPC's BWC Model Governance Framework also supports regular (e.g., monthly and annual) and event-based audits of BWC records to assess compliance with all applicable laws, policies, procedures, and professional standards, including those related to discrimination and the use of force.[48]

Concerns

The OHRC has maintained that BWCs can be an important tool for accountability, if their use is accompanied by robust procedures.

However, the OHRC has also heard the concerns raised by Black communities and others that BWCs do not capture a complete and accurate visual or audio record of what may have transpired in individual cases.

Recent studies have called into question the utility of BWCs because they often present only one perspective of an interaction or incident.[49] Specifically, BWCs record from the officer's perspective, and officers have been trained to narrate events while they are being recorded, which can present a skewed version of events. For example, yelling at a suspect to "stop resisting" may mislead one to believe an individual was resisting when they were not.[50]

We have also heard directly from Black people that BWCs will not prevent the deaths of Black persons by the police, and that more meaningful action is necessary.

Given the concerns, it is important that the use of BWCs be properly monitored and supervised. BWCs can be a helpful tool to learn about officer conduct and, where appropriate, enhance officer accountability for misconduct.

The OHRC recommends that supervisors review the BWC footage of **all** use-of-force incidents. In conducting these reviews, supervisors should consider additional information, including data from use-of-force reports (if completed), injury reports, subject and witness officer

notes, and other relevant reports. The supervisor should also assess whether there was a credible, non-discriminatory explanation for the use of force.[51]

BWCs and the mug shot database

The OHRC is concerned about using footage from BWCs in conjunction with the TPS mug shot database and facial recognition technology. Its use in these circumstances could exacerbate existing racial disparities in the criminal justice system.

The Chief Information Officer of the TPS explained that the use of facial recognition together with BWCs is rare. He maintained that the combined use would only arise in circumstances where a crime was captured on a BWC, but the suspect was not captured or identified. In such circumstances, the footage from the BWC could be entered into the mug shot database to see if they could identify the suspect.[52]

Although the combined use of BWC footage and the mug shot database may be rare, there must be a comprehensive consultation and study of the various human rights, due process, officer accountability, and public access and privacy implications of deploying these technologies together.

If the TPSB and TPS continue to allow BWC footage to be used in conjunction with the mug shot database, the OHRC supports the recommendation from the Canadian Civil Liberties Association (CCLA) that a dedicated consultation, privacy impact, and human rights impact assessment be undertaken.

Similarly, the IPC recommended that police services not adopt biometric technology (including facial recognition) in conjunction with BWCs until a full risk assessment is completed and the IPC is consulted.[53]

For the OHRC's recommendations regarding BWCs, see Recommendations 70 and 71.

Performance management systems, including supervision and discipline

The TPS currently uses the Uniform Performance Appraisal and Development Plan as its performance management system. Officers are assigned a rating by their next-level supervisor under several categories of evaluation, including:

- human rights
- personal qualities
- technical skills
- core competencies.

Former Deputy Chief responsible for Human Resources Command, Barbara McLean, stated that the next-level supervisor:

> … reviews calls, work, [and] assess[es] things like complaints and training. A lot of it is observation, being around them in the workplace. That gets translated. So, there's that assessment and room for comments by their supervisor. An active participation is what is expected from the supervisor.[54]

Evaluation of the human rights category is unclear and limited. It includes whether the officer:

- has attended and/or completed human rights training as required
- shows knowledge and understanding of the *Ontario Human Rights Code* and human rights issues as they apply to policing
  - examples include but are not limited to knowledge of racial profiling, racial bias in policing, racism, sexual harassment, sexism, ageism), and
- delivers policing services in a fair, respectful, and unbiased manner.[55]

Unfortunately, the TPS Uniform Performance Appraisal and Development Plan has not prevented systemic racial discrimination against Black people, as described throughout the Inquiry's report. Indeed, under the TPSB's RBDC Policy, race-based data are prohibited from being used for performance management.

The OHRC believes that the TPSB should immediately amend this policy to permit the use of race-based data in performance management. Similarly, the TPS should provide more explicit direction to supervisors on assessing compliance with anti-racism and anti-discrimination policies, procedures, and practices when evaluating officer performance.

In its 2020, *Police Reform* Report, the TPSB proposed changes to the performance management system. The TPSB directed the Chief to:

> Develop and implement a formal annual performance review process for uniformed Service Members, in consultation with any relevant experts, that will assist in identifying the strengths and areas for improvement of each police officer, and which will include an individualized annual performance plan that identifies the education, training and experiences to be completed in the coming year in order to build on their identified strengths and address their identified areas for improvement.[56]

However, the proposed changes do not provide specific guidance to address anti-Black racism, racial profiling, or racial discrimination.

The TPSB's implementation dashboard for the recommendation does not describe how officers will be evaluated in relation to anti-Black racism, racial profiling, or racial discrimination. Nor does it indicate related qualitative or quantitative measures. The dashboard states that the new performance review process:

> Provides performance evaluation to members based on the responsibilities of their roles and the competency behaviors tied to their level of leadership in the Service. Members will be required to examine the responsibilities of their roles and share:
>
> - the "what" of what they delivered, and
> - the manner in which they delivered it, the "how".[57]

Any new performance management system must include a meaningful review of officers' performance in human rights, including anti-Black racism, racial profiling, or racial discrimination. An officer's act of racial discrimination should be included in their evaluation and lead to progressive discipline, up to and including dismissal, where warranted.

Dr. Wortley stated, "any anti-racism policy is doomed to failure unless specific accountability mechanisms are put into place." He encouraged specific disciplinary consequences for personnel found guilty of racial bias, and a policy that would hold supervisors accountable for the racially biased behaviour of those under their supervision.[58]

This approach is broadly supported and has been endorsed by at least 22 community and advocacy groups.[59]

For the OHRC's recommendations on performance management, supervision and discipline, see Recommendations 74, 75, and 76.

Accountability mechanisms

Third-party findings

The OHRC identified eight Human Rights Tribunal of Ontario (HRTO) and court decisions between 2009 and 2017 that found that Black people were the victims of racial profiling or racial discrimination by TPS officers.[60] These cases involved multiple officers, and the misconduct included unnecessary stops, searches, charges, arrests, and the use of force. The HRTO and courts also found instances of biased and untrustworthy testimony from some of the officers.

This Inquiry revealed that none of the officers who were found to have engaged in racial profiling or discrimination by the HRTO were subjected to any formal discipline by the TPS. None were the subject of Notices of Hearing or brought before the TPS Disciplinary Tribunal under the *Police Services Act*.

TPS mechanisms to track cases

The OHRC asked the TPS why none of these cases was the subject of a Notice of Hearing or proceeded to a TPS Disciplinary Tribunal. The TPS advised that it could not provide an explanation for individual cases because of the statutory confidentiality provisions in the *Police Services Act*.[61]

However, the evidence examined by the OHRC demonstrated that the TPS has no formal mechanism to track, review, or act upon adverse findings of racial profiling and/or discrimination against officers by the HRTO or the courts.

TPSB mechanisms to track cases

The TPSB has a statutory responsibility to establish guidelines for dealing with complaints and to review the Chief's administration of the complaints system. This includes internal complaints.[62]

Notwithstanding this responsibility, it appears that like the TPS, the TPSB does not have any formal mechanism to track individual cases where racial profiling or discrimination is found, or how many TPS officers are disciplined for racial profiling or racial discrimination.[63] The TPSB advised the OHRC that it:

> Does not have a system for monitoring every decision of the criminal courts, many of which are not reported, to identify cases where there have been findings of Charter violations by TPS officers.

> However, the Board Office has established a system where reported decisions identifying issues of a systemic nature that involve the Board or the Service are identified and brought to the Board's attention.

> On occasion, a criminal decision involving the TPS will also come to the Board Office's attention through legal counsel. These may include *Charter* breach cases. In most cases, these cases come to the Board's attention because legal counsel has identified it as a decision that substantially alters the law of policing, could have impact on police governance or affect the public's trust in policing. In such cases, the Board's lawyers will bring the case to the attention of the Board's Executive Director [and] Chief of Staff, and a report may be prepared for the Board where appropriate. In other circumstances, the Board's Executive Director & Chief of Staff may raise the matter with the Chief or Chief's Office for further exploration, and then, if appropriate, discussion with the Board.[64]

The TPSB also advised the OHRC that it receives monthly reports from the Chief on officer discipline, which summarize the disposition of cases investigated and prosecuted under Part V of the *Police Services Act*, and "where particular systemic or other issues arise or are identified with the administration of the complaints system, the Board addresses them on a case-by-case basis."[65]

However, if cases are not investigated or prosecuted under the *Police Services Act*, they will not come to the attention of the TPSB.

To promote a service environment free of racial profiling and racial discrimination, the TPS and TPSB should take proactive steps to ensure officer accountability following decisions of the HRTO, courts or tribunals. Proactive steps should include an automatic investigation by Professional Standards when the HRTO or a court finds that an officer engaged in racial profiling or racial discrimination, regardless of whether the officer's conduct was the subject of the litigation.

Where the investigation reveals racial profiling or discrimination, the TPS must ensure there are appropriate transparent and meaningful consequences consistent with progressive discipline, up to and including dismissal.

The TPS should:

- determine the race of the alleged victim in allegations of officer misconduct
- investigate potential racial profiling or discrimination in all allegations of officer misconduct that involve Black people as victims, and
- identify tribunal/court decisions with findings of racial profiling or discrimination by officers (whether or not the officer's conduct was the subject of the litigation), and include them in an EIS and in performance management.

SIU investigations

SIU investigations are required whenever an officer is involved in an incident that results in death, serious bodily harm, or allegations of sexual assault.

When the SIU is notified of such an incident, the Chief of Police of the relevant police Service is also required to conduct an investigation. The purpose of the Chief's investigation is to review the policies or services provided by the Service and the conduct of its police officers.

The SIU is required to report the result of its investigation to the Attorney General, and notify the Chief of Police that they have done so. The SIU letter to the Chief of Police usually identifies any concerns about the conduct of the officer(s).

Within 30 days of receiving the SIU letter, the Chief of Police is required to report the findings of its internal investigation and any action taken or recommended to the Board.[66]

The OHRC identified 27 cases[67] where the SIU flagged problematic conduct in its letter to the Chief. None of them resulted in a hearing before the TPS Disciplinary Tribunal.

The OHRC is concerned by the lack of accountability where issues of potential misconduct are raised in SIU letters to the Chief. This is consistent with an observation by former TPSB Chair, Dr. Alok Mukherjee, in his book *Excessive Force*:

> In reality, these reviews follow the letter rather than the spirit of the law. They are largely paper exercises involving the checking off of a bunch of boxes in a report to the board to say that the officer complied with policies, procedures and training; that the equipment used was also in compliance; and that there were no conduct issues. When the SIU says it had no reason or lack sufficient grounds to lay [criminal] charges, the Chief's review invariably repeats that conclusion. To me, the review is a classic example of how the systems of accountability put in place by law are manipulated to protect police interest.[68]

The absence of TPS Disciplinary Tribunal hearings where the SIU identified problematic behaviour is symptomatic of a larger problem. Police officers are rarely disciplined for misconduct. According to a report by the CBC, only 1% of complaints made to the Office of the Independent Police Review Director (OIPRD) about Toronto police officers between 2014 and 2019 has led to a disciplinary hearing.[69]

The lack of transparency is also concerning in that the complaints investigated by the OIPRD and the TPS (internally) investigated appear to be resolved informally by the TPS, and remain confidential. As noted in the OHRC's *Framework for change to address systemic racism in policing*:

> The *Police Services Act*'s current confidentiality provisions prevent the public from knowing when and whether an officer was subject to some form of discipline for engaging in racial profiling, racial discrimination or other police misconduct. Only decisions from police service disciplinary tribunals are not confidential. This severely undermines public confidence in a system that must be transparent and grounded in the values espoused by the *Human Rights Code*.

The TPS must establish a process to fully investigate misconduct flagged by the SIU about racial profiling or racial discrimination. The TPS procedures should require the Chief or their designate to investigate each issue of problematic conduct the SIU Director raises in letters to the Chief. The Chief should report publicly to the TPSB on the findings and outcome of these investigations, subject to the confidentiality provisions of the *Police Services Act*.

The TPSB should also review the SIU letter and the findings of the Chief's internal investigation. The TPSB acknowledged that comparing these reports would:

- assist in the Board's oversight role
- allow the Board to ask questions where the SIU identifies potential misconduct
- allow the Board take appropriate policy action where potential systemic issues are identified.[70]

In his interview with the OHRC, SIU Director Joseph Martino stated that these recommendations made sense and he did not take issue with them.[71]

For the OHRC's recommendations regarding the SIU, see Recommendations 105, 106 and 107.

Tracking disciplinary decisions

The OHRC did not find any publicly available information on the number of officers disciplined for racial profiling, discrimination, or harassment as a result of a *Police Services Act* disciplinary hearing.

The OHRC asked the TPS for the relevant statistics. However, the TPS could not confirm whether, since 2010, the TPS Disciplinary Tribunal has found that any officers engaged in racial profiling, discrimination, or harassment. This suggests that the TPS does not track Disciplinary Tribunal findings for cases where officers have been found to have engaged in racial discrimination or racial profiling.

The TPS stated that it was unable to provide an answer on relevant statistics without reviewing all disciplinary tribunal decisions since 2010 and that it was unable to undertake the labour-intensive task of sorting, scanning and vetting TPS Disciplinary Tribunal decisions. The TPS noted that the OHRC could make a request to the Tribunal Office for these decisions.[72] The TPS also stated that the system for TPS complaints and reports of investigation is not designed to capture an individual's specific race.[73]

The TPS did confirm that from 2017 - 2020, there has only been one internal or public complaint alleging anti-Black racism in service delivery that the TPS has substantiated.[74]

This low number is concerning because of the evidence of systemic anti-Black racism, racial profiling, and racial discrimination detailed in the Inquiry's reports. This raises a real concern that incidents of anti-Black racism are not being captured and/or investigated by the TPS.

For the OHRC's recommendations on accountability, see Recommendations 76 and 77.

Transparency and accountability in discipline

Police services should promote greater accessibility and understanding of police discipline by routinely collecting and publishing information about allegations of police misconduct, the results of investigations into them, and disciplinary outcomes. This transparency is important for reassuring communities that the police are serious about investigating and punishing misconduct by their officers.[75]

The OHRC joins community agencies and the IPC in their support for greater transparency by police services. During this Inquiry, the IPC advised the OHRC that:

> Public trust in policing requires a strong commitment to transparency through … the proactive disclosure of de-identified information and other information capable of informing the public about critical police decisions, activities, and practices, including in relation to the effectiveness of oversight and disciplinary systems. Therefore, the IPC would welcome recommendations, including any necessary legislative amendments, to increase proactive disclosure of statistical, anonymized or de-identified data, as long as it does not involve personal information. Public reporting of this nature would support the public's ability to hold police agencies to account by helping the public better understand how policing is being conducted and the extent to which reform efforts are progressing.[76]

Notably, the lack of transparency in police discipline is not limited to the TPS. A province-wide approach to transparency in police discipline is an important requirement. Consistent with the OHRC's *Framework for change to address systemic racism in policing*, the TPSB should urge the provincial government to amend the *Police Services Act* and/or the *Community Safety and Policing Act*, 2019 to include a requirement for greater transparency in police discipline.[77]

For the OHRC's recommendations regarding transparency, see Recommendations 72, 73, 78, 79 and 82.

Community oversight

Community can and should play an integral role in policing oversight, whether that comes in the form of consultations, ongoing working groups or committees, and/or integrated positions in policing services. However, this oversight must not be in name or appearance alone. Rather, community involvement in policing activities should carry weight, and community recommendations should be implemented and properly evaluated by an external party.

Community oversight should also be properly resourced so that community members are not expected or required to meet onerous time and work requirements without appropriate compensation.

Police and Community Engagement Review

In 2012, the TPS established the Police and Community Engagement Review (PACER) committee "to assess and address issues of racial profiling and bias in community engagements (at both the individual and systemic levels) to enable the delivery of bias-free police services."[78]

PACER's vision was to establish the TPS as "a world leader in bias-free service delivery." PACER's work included a "comprehensive review of Service governance, business processes, and the culture of policing[,]" and resulted in 31 recommendations.[79]

In 2013, the Committee released the *PACER Report: Phase II – Internal Report & Recommendations*, which recognized that:

> To properly evaluate the success of the recommendations presented in this report requires a formal and impartial third party to design and oversee the evaluation project. The Key Performance Indicators (KPIs) of the evaluation must be filtered through an objective lens that ensures they accurately assess the outcomes of the recommendations.[80]

In response to PACER, the TPS entered into partnership with the Center for Policing Equity (CPE) and Dr Phillip Goff to evaluate the implementation of the recommendations in the PACER Report. Dr. Goff's final report was due on March 31, 2017. However, the evaluation was never completed. In its 2018 update on the PACER recommendations, the TPS stated that the CPE's policy assessment is "ongoing."[81]

The TPS advised the OHRC that they have not had contact with the CPE since January 2020, at which time CPE advised that there is no timeline for the completion of this report.[82] In other words, there was no independent evaluation to determine whether the PACER recommendations were implemented and what if any change resulted from their implementation.

It is concerning that implementation of some recommendations remain pending at time of writing this report – ten years following the release of the PACER Report. It is also concerning that the TPS has failed to follow through with an independent evaluation of its implementation of the recommendations. This demonstrates a lack of accountability. As noted above, community involvement is an important part of policing, but only if it is taken seriously, and any resulting recommendations are implemented with external evaluation of progress and effectiveness.

Anti-Racism Advisory Panel

The Andrew Loku inquest jury recommended that the TPSB:

> Establish a new committee to consider possible or identified disparities in services and outcomes for racialized persons and consider interventions to address any such disparities. The committee should include representatives of the Toronto Police Service, subject matter experts and members of racialized communities, including the Black community. The committee should consider the intersectionality of mental health and race both in terms of member composition and issues to be addressed.[83]

In 2018, the TPSB formed the Anti-Racism Advisory Panel (ARAP) to advise the TPSB on its role in "overseeing and monitoring the response to and implementation of the recommendations directed both to the Toronto Police Service and to the Toronto Police Services Board, by the jury in the Inquest into the Death of Andrew Loku."[84]

The terms of reference for the ARAP were to establish a monitoring framework for the TPSB to use to assess the response to and implementation of the inquest recommendations, "including the creation of key benchmarks and performance indicators addressing each recommendation."[85]

The TPSB selected applicants with lived experience and a background in anti-racism, anti-Black racism, mental health and addictions, as well as people familiar with the issues raised at the Loku inquest.[86]

On August 18, 2020, ARAP became a permanent advisory committee of the TPSB. Its role is to "advise and support the Board in relation to policing and racism, anti-Black racism and anti-Indigenous racism," which includes:

- identifying current issues relating to racism, anti-Black racism, anti-Indigenous racism and policing, including developing and/or recommending policies, strategies, and action plans for approval by the TPSB
- monitoring the implementation of Toronto Council's Action Plan to Confront Anti-Black Racism
- monitoring the implementation of the Board's RBCD Policy, including reviewing the data analysis and any interventions developed by the TPS to address racial disparities for feedback and recommendations for enhancement
- monitoring the implementation of the recommendations from the Andrew Loku inquest through the monitoring framework previously developed by ARAP
- reviewing the development and implementation of all TPS training and offering recommendations for enhancement, including training on anti-racism
- monitoring the implementation of the 81 recommendations in the TPSB's *Police Reform* Report.[87]

ARAP was involved in a number of important issues, including assisting with drafting the RBCD Policy for the Board and the development of a framework to monitor the implementation of the Loku inquest recommendations.[88] The monitoring framework established performance targets and benchmarks that the TPSB and TPS could use to measure implementation of the Loku inquest recommendations, and hold themselves accountable.[89]

ARAP did not review the "means of implementation" of the Loku recommendations. For example, ARAP did not review any training programs or procedures that were developed or revised in response to the jury recommendations.[90] Whether that was the result of a lack of resources or a narrow mandate, this is an important missed step in ensuring that the recommendations were effectively implemented.

Among other things, this highlights the need for ARAP to be empowered and resourced adequately, including compensating its members for their time and work similar to the civilian members of the TPSB. It also highlights the need for independent monitoring of the implementation of any recommendations. The OHRC recommends that the TPSB provide ARAP with additional resources to take on an expanded role that would include assisting with the implementation of the OHRC's recommendations.

ARAP is a novel and commendable approach that brings together community members, academics, and police Service members to develop police governance policy. The OHRC also recognizes the important role that should be played by ARAP members in the robust approach to implementation discussed later in this chapter

For the OHRC's recommendations on community oversight, see Recommendations 2, 3, 70(b), 85, and 86.

Independent monitoring and enforceability

For decades, members of Black communities in Toronto have raised alarms about anti-Black racism, both individual and systemic, within the TPS and the TPSB. Multiple reviews and reports have confirmed the existence of anti-Black racism, and recommended changes to TPSB policies and TPS practices and procedures to eliminate racial profiling and discrimination.

The TPS recently acknowledged the existence of anti-Black racism. This acknowledgement is an important and welcome development.

The TPS has also implemented some of the recommendations and made some improvements.

However, the required progress has been slow and insufficient.

The TPS and TPSB systems have not provided effective monitoring and accountability for anti-Black racism, racial profiling, and racial discrimination against Black people. There are few examples of officers being evaluated, investigated, or disciplined for racial profiling or discrimination. There has been structural impunity for systemic racism within the TPS and TPSB.

Not surprisingly, the outcomes for Black people have not changed.

The TPS and TPSB have demonstrated that they alone cannot assess, monitor, and change their systems to eliminate anti-Black racism, which is why the OHRC recommends that the Inquiry's recommendations be independently monitored and legally binding.

Independent monitoring and effective and expeditious legally binding enforcement measures are necessary to help restore trust among Black communities. They provide communities with mechanisms for input, monitoring and transparency, and accountability.

Community stakeholders such as the Black Legal Action Centre (BLAC) and Canadian Association of Black Lawyers (CABL) support legally binding enforcement measures, given their concerns about the ability of the TPS and TPSB to address systemic racism using traditional measures such as non-binding recommendations, or directions from the TPSB.[91]

Similarly, the IPC recognized:

> the importance of an approach to rights protection that, whenever possible, is informed by meaningful public engagement, supported by effective enforcement mechanisms, and capable of producing concrete results that can be assessed and verified by an independent and expert reviewer in a transparent manner. A commitment to such an approach by the Board and the Service could play a significant role in helping build citizen trust in policing.[92]

Legally binding measures between parties can take various forms. In Ontario for example, the OHRC has previously entered into a model of enforcement, known as a consent order.[93] This is an agreement between parties, made legally binding by filing it with the HRTO. Recently the OHRC and the Peel Regional Police Service entered into a Memorandum of Understanding which built in an agreement to ultimately file a consent order with the HRTO.

Another model of legally binding enforcement is arbitration. In the current context, this would involve an agreement in which disputes over implementation of the OHRC's recommendations would be addressed through binding arbitration. This, too, can represent an alternative to potentially lengthy contested legal proceedings. This model gives the TPS, TPSB, and the OHRC input to select the final arbiter, which can facilitate the timeliness of resolutions to any matter in dispute.

The OHRC's inquiry has confirmed that Black communities have little confidence in a process that does not result in accountability for the TPS and TPSB. Legally binding measures are an important step in building confidence in policing and promoting a fundamental shift in practices and culture.

Chapter 9 Endnotes

[1] See Appendix 6 – Historical timeline of racial profiling and racial discrimination of Black persons by the TPS, OHRC initiatives related to the TPS, and the OHRC's work on racial discrimination in policing.

2 TPSB, Policy on Race-Based Data Collection, Analysis and Public Reporting (19 September 2019), online: https://www.tpsb.ca/policies-by-laws/board-policies/177-race-based-data-collection-analysis-and-public-reporting.

3 TPSB, "Minutes of Virtual Public Meeting: September 17, 2020" (17 September 2020), Report of Chief Ramer regarding "Toronto Police Service Board's Race-based Data Collection, Analysis and Public Reporting Policy – Quarterly Progress Update on Implementation – Third Quarter" (6 August 2020) at 54, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/635-setpember-17-2020-agenda.

4 TPSB, "Minutes of Virtual Public Meeting: June 24, 2021" (24 June 2021), Report of Chief Ramer regarding "Toronto Police Services Board's Race-Based Data Collection (R.B.D.C.), Analysis and Public Reporting Policy – Progress Update on Implementation" (15 June 2021) at 260, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/694-2021-06-24-agendaNULL; Letter from the TPS to the OHRC re OHRC Inquiry into Racial Profiling Benchmarking Data and Phase II Race Based Data Collection (8 September 2021); Toronto Police Service, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at 10, online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

5 TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022), online (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

6 Letter from Chief Commissioner Chadha to Chief Ramer re Toronto Police Service Consultation with the Ontario Human Rights Commission on Race-Based Data Collection (25 January 2021); TPSB, "Minutes of Virtual Pubic Meeting: June 24, 2021" (24 June 2021), Report of Chief Ramer regarding "Toronto Police Services Board's Race-Based Data Collection (R.B.D.C.), Analysis and Public Reporting Policy – Progress Update on Implementation" (15 June 2021) at 260, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/694-2021-06-24-agenda. See for example, TPSB, "Minutes of Virtual Public Meeting: September 17, 2020" (17 September 2020), Report of Chief Ramer regarding "Toronto Police Service Board's Race-based Data Collection, Analysis and Public Reporting Policy – Quarterly Progress Update on Implementation – Third Quarter" (6 August 2020) at 54, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/635-setpember-17-2020-agenda; Toronto Police Services Board, "Minutes of Virtual Public Meeting: December 15, 2020" (15 December 2020), Report of Chief Ramer regarding "Recommendation #73 – Status of Implementation of the Race-Based Data Collection, Analysis and Reporting Policy and Analysis of Gaps with the OHRC's Recommendations" (3 November 2020), online (pdf): https://www.tpsb.ca/jdownloads-categories/send/32-agendas/653-december-15-2020-agenda.

7 A Protective search is "used generally during Investigative Detention and involves a limited search of a person who has been detained by policy when there is reasonable belief the person poses a safety risk. The scope of the search is limited to exterior patting of clothing such as pockets, waistband or areas that may reasonably conceal such items as weapons or implements that may be used as weapons, usually with open hands to maximize the ability to detect weapons through clothing. This search may also be described as a 'safety search', as that is the purpose and objective." Toronto Police Service, *Procedure 01-02 Search of Persons* (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/a0/f9/a0f91c6c-e992-4036-badb-1f14fe1a6980/8e76ce5e-27b3-465d-b31a-60e580a1de8a.pdf.

8 A Frisk search is "used generally for Search Incident to Arrest and means a more-thorough search that may include emptying and searching pockets as well as removal of clothing, which does not expose a person's undergarments, or the areas of the body normally covered by undergarments. The removal of clothing such as belts, footwear, socks, shoes, sweaters, extra layers of clothing, or the shirt of a male would all be included in a Frisk search. A Frisk search may be commenced in the field and concluded at the station." Toronto Police Service, *Procedure 01-02 Search of Persons* (24 November 2021), online (pdf): https://www.tps.ca/media/filer_public/a0/f9/a0f91c6c-e992-4036-badb-1f14fe1a6980/8e76ce5e-27b3-465d-b31a-60e580a1de8a.pdf.

9 For example, see OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (Toronto: OHRC, 2020) at 109-110, online (pdf): https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20TPS%20report%20%28updated%20January%202023%29.pdf TPS, Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 ‒ Detailed Report (June 2022), "Appendix A: Action Plan" at 92, online: www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

10 OHRC interview of Steven Lurie and Jennifer Chambers (Community Co-Chairs of MHAAP) (9 June 2022).

11 Letter from the TPS to the OHRC re OHRC Inquiry into Racial Profiling Benchmarking Data and Phase II Race Based Data Collection (8 September 2021).

12 Letter from Chief Commissioner Chadha to Chief Ramer re Toronto Police Service Consultation with the Ontario Human Rights Commission on Race-Based Data Collection (25 January 2021).

13 For example, see U.S. Department of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* (4 March 2015) at 91–92, online (pdf): https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf; Consent Decree between the United States (i.e. the DOJ) and the City of Ferguson (April 2016) at 102, 103, 108–115 online (pdf): https://www.justice.gov/d9/ferguson_consentdecree_4-19-16.pdf Consent Decree between the United States (i.e., the DOJ), the Mayor and City Council of Baltimore and the Police Department of Baltimore City (January 2017) at 28-30, 67 and 72–74 online (pdf): https://www.justice.gov/opa/file/925056/download

14 OHRC Roundtable interview with the TPA (10 November 2022).

15 Information and Privacy Commissioner of Ontario, "Additional comments and recommendations on the OHRC's draft recommendations to eliminate racial profiling and racial discrimination of Black persons by the Toronto Police Service" (10 November 2022).

16 OHRC, *Framework for change to address systemic racism in policing* (29 July 2021) at number 2, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

17 Institute on Race and Justice, Northeastern University, *Promoting Cooperative Strategies to Reduce Racial Profiling*, COPS Evaluation Brief No 1 (Washington, D.C.: Office of Community Oriented Policing Services, U.S. Department of Justice, 2008) at 7, online: https://www.ojp.gov/ncjrs/virtual-library/abstracts/promoting-cooperative-strategies-reduce-racial-profiling.

18 Christi Guillon & William King, "Early intervention systems for police: a state-of-the-art review" (2020) 43:4 *Policing: An Intl J* 643 at 644.

19 Christi Guillon & William King, "Early intervention systems for police: a state-of-the-art review" (2020) 43:4 *Policing: An Intl J* 643 at 644.

20 Christi Guillon & William King, "Early intervention systems for police: a state-of-the-art review" (2020) 43:4 *Policing: An Intl* J 643 at 644.

21 For further information regarding the PACER Report, see Appendix 4.

22 TPS, *The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report & Recommendations* (2013) at 56, online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.

23 TPS*, The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report & Recommendations* (2013) at 57-58, online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.

24 TPSB, "Minutes of Virtual Public Meeting: November 24, 2020" (24 November 2020), Report from Chief Ramer regarding "Police Reform in Toronto: Toronto Police Service Initial Response" (12 November 2020), Appendix regarding recommendation #74 – PACER Report at 160, online (pdf): https://www.tpsb.ca/jdownloads-categories/send/32-agendas/650-november-24-2020-agenda.

25 Report from Chief James Ramer to TPSB, regarding "Recommendation 45 – Early Intervention Program" (4 November 2020), online (pdf): https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R45_-_Conduct_Early_Intervention_Reporting_-_Report_to_Board.pdf.

26 OHRC Interview with then Staff Superintendent Myron Demkiw (Corporate Risk Management) (6 July 2020). See Also, TPSB "Minutes of Virtual Public Meeting: July 27, 2023" (July 27, 2023), Report from Chief Myron Demkiw regarding "Report: Professionalism and Accountability " (June 2023) at 173-174 online: https://tpsb.ca/jdownloads-categories?task=download.send&id=795&catid=69&m=0 Note: There does not appear to be any inclusion of race-based data within an EIS in any document publicly available or made available to the OHRC

27 TPSB, "Minutes of Virtual Public Meeting: June 19, 2020" (19 June 2020), *Corporate Risk Management Annual Report* (2019) at 175, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/628-june-19-2020-revised-agenda.

28 TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Chair Jim Hart regarding Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020) at 7, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

29 Report from Chief James Ramer to TPSB, regarding "Recommendation 45 – Early Intervention Program" (4 November 2020), online (pdf): https://www.torontopolice.on.ca/tpsb-reform-implementation/docs/R45_-_Conduct_Early_Intervention_Reporting_-_Report_to_Board.pdf.

30 Christi Guillon & William King, "Early intervention systems for police: a state-of-the-art review" (2020) 43:4 *Policing: An Intl J* 643 at 647.

31 See Chapter 4 – Consultations: policy roundtable, officer survey and OHRC engagement with Black communities and community calls for "detasking, defunding and disarming."

32 Paola Loriggio, "Toronto police to look into whether race-based data could be used differently," *Toronto Star* (22 June 2022), online: https://www.thestar.com/news/gta/2022/06/22/ontario-law-doesnt-prevent-police-from-using-race-based-data-to-assess-officers-ipc.html.

33 The Canadian Press, "Ontario law doesn't prevent police from using race-based data to assess officers: IPC," *The Globe and Mail* (22 June 2022), online: https://www.theglobeandmail.com/canada/toronto/article-ontario-law-doesnt-prevent-police-from-using-race-based-data-to-assess/.

34 Letter from Patricia Kosseim (Information and Privacy Commissioner of Ontario) to Patricia DeGuire (Chief Commissioner of the OHRC) – The Information and Privacy Commissioner of Ontario's submission regarding the Ontario Human Rights Commission's public inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (10 November 2022).

35 Ontario, Data Standards for the Identification and Monitoring of Systemic Racism – Context: Understanding racism and Standards for Participant Observer Information (POI) of race (guidance under standard #39); *Anti-Racism Act*, 2017, SO 2017, c 15, s 6(1); O Reg 267/18.

36 TPSB, *Policy on Race-based Data Collection, Analysis and Public Reporting* (19 September 2019), online: https://www.tpsb.ca/policies-by-laws/board-policies/177-race-based-data-collection-analysis-and-public-reporting.

37 TPSB, "Minutes of Public Meeting: June 22, 2022" (22 June 2022), Report from Chief James Ramer regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Phase 1 Report on Use of Force and Strip Search Data Analysis" at 312, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0.

38 TPSB, "Minutes of Public Meeting: April 28, 2023" (28 April 2023), Report from Chief Myron Demkiw regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Update" at 188, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=787&catid=69&m=0.

39 TPSB, "Minutes of Public Meeting: June 22, 2022" (22 June 2022), Report from Chief James Ramer regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Phase 1 Report on Use of Force and Strip Search Data Analysis" at 312, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0.

40 TPSB, "Minutes of Public Meeting: April 28, 2023" (28 April 2023), Report from Chief Myron Demkiw regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Update" at 183, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=787&catid=69&m=0.

41 TPSB, "Minutes of Public Meeting: April 28, 2023" (28 April 2023), Report from Chief Myron Demkiw regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Update" at 183—184, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=787&catid=69&m=0.

42 TPS, Body-worn cameras: A report on the findings of the pilot project to test the value and feasibility of body-worn cameras for police officers in Toronto (2016).

43 TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Chief Mark Saunders "Approval of Body Worn Camera (B.W.C.) Contract Award and Project Implementation" (29 July 2020) at 144, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

44 TPSB, Policy on Body Worn Cameras (24 November 2020), online: https://www.tpsb.ca/policies-by-laws/board-policies/154-body-worn-cameras.

45 TPSB, "Minutes of Virtual Public Meeting: March 31, 2022" (31 March 2022), Report from Executive Director and Chief of Staff, Ryan Teschner regarding "The Board's 2022-23 Business Plan" (10 March 2022), Appendix A, "A Time of Change: Toronto Police Services Board Business Plan 2022-23" at chapter 13, "Information Technology and Innovation – Key Projects" at 40—41, online(pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=721&catid=32&m=0.

46 TPSB, "Minutes of Public Meeting: June 22, 2022" (22 June 2022), Report from Chief James Ramer regarding "Toronto Police Service Board's Race-Based Data Collection, Analysis and Public Reporting Policy – Phase 1 Report on Use of Force and Strip Search Data Analysis" at 312, online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=747&catid=62&m=0.

47 TPS, Procedure 15-20 Body Worn Camera (6 July 2022), online (pdf): https://www.tps.ca/media/filer_public/98/c8/98c8e176-4b51-4415-b55c-be3b8f7c853c/15-20_body-worn_camera_20220706_ext.pdf.

48 Information and Privacy Commissioner of Ontario, "Model Governance Framework for Police Body-worn Camera Programs in Ontario" (June 2021) at 17, online (pdf): www.ipc.on.ca/wp-content/uploads/2021/07/model-governance-framework-police-body-worn-camera-programs.pdf.

49 David Yokum, Anita Ravishankar & Alexander Coppock, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial" (20 October 2017), The Lab @ DC, online (pdf): https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf.

50 National Association of Criminal Defense Lawyers, "Policing Body Cameras: Policies and Procedures to Safeguard the Rights of the Accused" (2017) at 22–24, online (pdf): www.nacdl.org/getattachment/4163cc7b-1f4e-4e6c-9a60-a76794390d94/policing-body-cameras-policies-and-procedures-to-safeguard-the-rights-of-the-accused.pdf.

51 OHRC, "Letter to Toronto Police Service and Toronto Police Services Board on its policy and procedure on body-worn cameras" (28 October 2020), online: www.ohrc.on.ca/en/news_centre/letter-toronto-police-service-and-toronto-police-services-board-its-policy-and-procedure-body-worn#_edn1.

52 OHRC Interview with Colin Stairs (Chief Information Officer) and Ian Williams (Director of Information Management) (16 June 2022).

53 Information and Privacy Commissioner of Ontario, "Model Governance Framework for Police Body-worn Camera Programs in Ontario" (June 2021) at 1—2, online (pdf): www.ipc.on.ca/wp-content/uploads/2021/07/model-governance-framework-police-body-worn-camera-programs.pdf; Information and Privacy Commissioner of Ontario, "Additional comments and recommendations on the Ontario Human Rights Commission's draft recommendations to eliminate racial profiling and racial discrimination of Black persons by the Toronto Police Service" (10 November 2022).

54 OHRC interview with Deputy Chief Barbara McLean (Human Resources Command) (12 March 2020)..

55 Toronto Police Service 809 Uniform Performance Appraisal and Development Plan, Rank: Constable (2018); OHRC interview with Deputy Chief Barbara McLean (Human Resources Command) (12 March 2020).

56 TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), Report from Chair Jim Hart regarding "Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (10 August 2020) at 46, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

57 TPS, recommendation 46 completion report (13 January 2022) – Toronto Police Service Board Police Reform Implementation Dashboard (retrieved 27 October 2022) https://data.torontopolice.on.ca/pages/tpsbimplementation.

58 Scot Wortley, "Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit, Final Report" (2006) at 79–80, online (pdf): www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/AfricanCanadianClinicIpperwashProject_SIUStudybyScotWortle

59 OHRC, "Submission to the Ministry of Community Safety and Correctional Services on the Strategy for a Safer Ontario" (29 April 2016), online: www.ohrc.on.ca/en/strategy-safer-ontario-%E2%80%93-ohrc-submission-mcscs.

60 *Abbott v Toronto Police Services Board*, 2009 HRTO 1909; *Maynard v Toronto Police Services Board*, 2012 HRTO 1220; *Shaw v Phipps*, 2012 ONCA 155; *R v Ahmed*, [2009] OJ No 5092 (ONSC); *R v K(A)*, 2014 ONCJ 374; *R v Smith*, 2015 ONSC 3548.

61 Letter from the TPS to OHRC – Answers to follow-up requests and questions arising from OHRC interview of Superintendent Domenic Sinopoli (Professional Standards Unit) (3 June 2020); OHRC Interview of Peter Code (Staff Superintendent, Professional Standards Unit) (7 June 2022); *Roberts v Toronto Police Services Board,* 2016 HRTO 1464; *Police Services Act*, RSO 1990, c P15 at s 95:

Confidentiality

95 Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations;

(b) to his or her counsel;

(c) as may be required for law enforcement purposes; or

(d) with the consent of the person, if any, to whom the information relates.

62 *Police Services Act*, RSO 1990, c P15 at s 31(1)(i) and (j).

63 Responses of the TPSB to written questions at 78 and 81, asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19. Further, according to the TPSB, to the extent that the TPSB considers the specifics of a civil or criminal case, its discussions would be confidential due to solicitor-client privilege or the statutory confidentiality provisions of the *Police Services Act*, RSO 1990, c P15.

64 Responses of the TPSB to written questions at 84, asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19.

65 Responses of the TPSB to written questions at 78, asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19.

66 Section 11 of O Reg 267/10 under the *Police Services Act* states that the Chief of police shall cause an investigation into any incident where the SIU has been notified. O Reg 267/10 was revoked on December 1, 2020. The *Special Investigations Act*, 2019, SO 2019, c 1 Sch 5 and O Reg 268/10 came into effect on the same day. Section 32 of O Reg 268/10 states that the chief of police shall "cause an investigation to be conducted into any incident involving a police officer in the chief's police force that becomes the subject of an investigation by the SIU Director[.]" The purposes of the investigation are the same as under O Reg 267/10.

[67] Between January 1, 2013 and June 30, 2017: see Appendix 5 – Methodology.

68 Alok Mukherjee with Tim Harper, *Excessive Force: Toronto's Fight to Reform City Policing* (Madeira Park: Douglas & McIntrye, 2018) at 205–206.

69 Nicole Brockbank, "Only 1% of public complaints against Toronto Cops led to a disciplinary hearing in past 5 years", *CBC News* (28 October 2020), online: www.cbc.ca/news/canada/toronto/public-complaints-police-disciplinary-hearings-1.5778459.

70 Responses of the Toronto Police Services Board to written questions at 99, asked under s. 31(7)(c) of the *Human Rights Code*, RSO 1990, c H19. Note that officer accountability for misconduct flagged by the SIU director does not appear to be addressed in the TPSB's report on *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* found in: Toronto Police Services Board, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020) at 7, online (pdf): https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda.

71 OHRC interview of Joseph Martino (Director of the SIU) (26 May 2022).

72 Letter from the TPS to the OHRC – Answers to follow-up requests and questions arising from OHRC interview with Superintendent Domenic Sinopoli (Professional Standards Unit) (3 June 2020).

73 Letter from the TPS to the OHRC (15 June 2021).

74 Letter from TPS to the OHRC – Additional information arising from the OHRC interview with Deputy Chief Barbara McLean (Human Resources Command) (9 July 2020).

75 David H Bayley, Michael A Davis and Ronald L Davis, "New Perspectives in Policing – Race and Policing: An Agenda for Action" (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2015) at 10, online (pdf): www.ncjrs.gov/pdffiles1/nij/248624.pdf.

76]Letter from Patricia Kosseim (Information and Privacy Commissioner of Ontario) to Patricia DeGuire (Chief Commissioner of the OHRC) – The Information and Privacy Commissioner of Ontario's submission regarding the Ontario Human Rights Commission's public inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (10 November 2022).

77 OHRC, *Framework for change to address systemic racism in policing* (29 July 2021) at number 7, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

[78] TPS, *The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report & Recommendations* (2013) at 4–5, online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.

[79] TPS, *The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report & Recommendations* (2013) at 3–6, online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.NULL

[80] TPS, *The Police and Community Engagement Review (The PACER Report): Phase II – Internal Report & Recommendations* (2013) at 80, online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf.

[81] TPS, PACER Recommendations Update (December 2018).

[82] TPSB, Agenda for the Public Meeting of the Toronto Police Services Board (24 November 2020), at 195 states: "Note – 2018.05.18 was the last contact with the CPE until contacted by the PACER team on January 17, 2020, at which point CPE provided no timeline for completion of their report." Online: https://www.tpsb.ca/jdownloads-categories/send/32-agendas/650-november-24-2020-agenda

[83] Office of the Chief Coroner, Jury Recommendations Inquest into the death of Andrew Loku (30 June 2017) at Recommendation 17.

[84] *Report from the ARAP Interim Steering Committee to the TPSB re ARAP – Recommendations of the Interim Steering Committee* (5 April 2018); Toronto Police Services Board, "Minutes of Public Meeting: April 18, 2018" (18 April 2018), online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=588&catid=49&m=0.

[85] *Report from the ARAP Interim Steering Committee to the TPSB re ARAP – Recommendations of the Interim Steering Committee* (5 April 2018); Toronto Police Services Board, "Minutes of Public Meeting: April 18, 2018" (18 April 2018), online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=588&catid=49&m=0.

[86] *Report from the ARAP Interim Steering Committee to the TPSB re ARAP – Recommendations of the Interim Steering Committee* (5 April 2018); Toronto Police Services Board, "Minutes of Public Meeting: April 18, 2018" (18 April 2018), online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=588&catid=49&m=0; Report from the ARAP Interim Steering Committee to the TPSB re ARAP Membership (10 August 2018); "Minutes of Public Meeting: August 23, 2018" (23 August 2018), online (pdf): https://tpsb.ca/jdownloads-categories?task=download.send&id=598&catid=49&m=0.

[87] TPSB, "Minutes of Virtual Public Meeting: August 18, 2020" (18 August 2020), regarding Police Reform Initiatives, online: https://tpsb.ca/jdownloads-categories/send/57-2020/634-august-18.

[88] TPSB, "Anti-Racism Advisory Panel (ARAP)", online: https://www.tpsb.ca/advisory-panels/24-panels-and-committees/94-arap.

[89] OHRC interview with Uppala Chandrasekera (former member of the TPSB and former co-chair of ARAP) (1 October 2020).

[90] OHRC interview of Uppala Chandrasekera (former member of the TPSB and former co-chair of ARAP) (1 October 2020).

[91] Black Legal Action Centre, "Ontario Human Rights Commission's releases report *A Disparate Impact,* the second interim report on racial profiling & racial discrimination of Black persons by the Toronto Police Service (TPS)" (11 August 2020), online: https://twitter.com/blac_ontario/status/1293173166035152898; Canadian Association of Black Lawyers, "Statement of the Canadian Association of Black Lawyers in response to *A Disparate Impact*, the Ontario Human Right Commission's Second Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service, released on August 10, 2020" (19 August 2020), online (pdf): https://cabl.ca/wp-content/uploads/2020/08/CABL-response-to-OHRC-and-TPSB.pdf.

[92] Information and Privacy Commissioner of Ontario, "Additional comments and recommendations on the Ontario Human Rights Commission's draft recommendations to eliminate racial profiling and racial discrimination of Black persons by the Toronto Police Service" (10 November 2022).

[93] *OHRC v Ontario (Community Safety and Correctional Services)*, 2018 HRTO 60.

Chapter 10 - Conclusion

The OHRC's finding of systemic racial discrimination, racial profiling, and anti-Black racism in policing in Toronto is not controversial. It has been experienced by Black communities for decades and acknowledged by the TPS and TPSB.

To ensure real change, the TPS and TPSB must commit to effective and expeditious legally binding enforcement measures. The decades of reports and calls for action from Black communities show that if the TPSB and TPS are committed to change, they must legally bind themselves to that change.

The need for a legally binding commitment does not imply that the TPS or TPSB will otherwise act in bad faith. Instead, it is a recognition that the systemic changes required to fully address anti-Black racism and discrimination in policing are significant and will necessarily come into conflict with entrenched aspects of the status quo. Legally binding enforcement measures will ensure the changes proposed here are adopted and implemented, even when short-term pressures may weigh against them.

The OHRC's final report on its Inquiry into anti-Black racism by the Toronto Police Service sets out a path of meaningful actions that will change outcomes for Black communities.

A path informed by:

- OHRC's findings
- research into best practices
- engagement with Black communities, organizations, and community leaders
- subject matter experts, and
- the TPS, TPSB and TPA

A path that the TPS and TPSB must be held accountable to follow. A path that will build trust between Toronto police and Black communities.

Anti-Black racism and systemic discrimination exist in society broadly. The TPS and TPSB cannot eliminate all discrimination in society, but they can – and the *Code* requires them to – make sure their own work does not create or perpetuate the disadvantage experienced by Black people. Policies, procedures, and accountability mechanisms must be adopted and strengthened to ensure the conduct of police narrows the gap between Black people and the rest of society, rather than widening it.

The OHRC believes that by adopting its recommendations, the TPS and TPSB can provide policing services in a way that complies with the *Code*.

This report is the first of its kind. It combines hard data with the lived experiences of Black communities, chronicling the extensive and long-standing harm suffered by Black people and communities as a result of discriminatory policing over the past decade, and for many years prior.

The impacts of such harm at a societal level are incalculable. The evidence of systemic racial discrimination and anti-Black racism cannot be ignored. The TPS and TPSB have the opportunity to take decisive action to do their part to end this cycle. They have the opportunity to build trust with the communities they serve, and move *From Impact to Action*.

Appendices

Appendicies

Appendix 1 - Recommendations

The OHRC's recommendations consist of actions the TPS and TPSB must take to:

- address systemic racial discrimination, racial profiling, and anti-Black racism
- be held accountable for their implementation, and
- improve outcomes for Black communities.

The recommendations are informed by OHRC's findings through the course of our Inquiry. They are based on research and consultations with:

- Black communities in the Greater Toronto Area
- subject matter experts

- the TPS, TPSB and TPA
- a roundtable on policing hosted by the OHRC and TPSB
- best practices from jurisdictions across North America, and
- successful evidence-based strategies developed over a span of 30 years of public inquiries, policy and litigation experience related to policing.

Most recommendations are directed to the TPS and the TPSB, and can be acted upon without changes to existing legislation. Some recommendations may require amendments to legislation or changes to longstanding provincewide police practices to achieve the recommendation's objective. Those recommendations are directed to the province, although they call upon the TPSB to engage with the provincial government to address the areas we have identified at a provincial level.

The OHRC recognizes that since the Inquiry's launch, the TPSB and TPS have introduced initiatives addressing anti-Black racism and discrimination that are documented in this report. The recommendations address continuing gaps identified through the OHRC's review of policies, procedures, training, and accountability mechanisms.

Although the OHRC attempted to ensure its recommendations reflect current initiatives, the OHRC acknowledges that since this report was written, the TPS and TPSB may have introduced new initiatives or enhanced existing ones.

Use of experts

For many of the recommendations, it will be clear that TPS and the TPSB will need to utilize various experts to guide them, as they did in developing their race-based data collection practices. In addition to subject matter expertise, such experts should have sensitivity to the issues concerning systemic racism in policing, including anti-Black racism, and where possible, relevant lived experiences.

The OHRC recommends that:

1. The TPS and TPSB work with experts to:
   a. Incorporate all the Inquiry's recommendations into its policies, procedures, training and education, anti-racism initiatives, and accountability mechanisms.
   b. Identify leading practices and key performance indicators for addressing systemic discrimination and reducing race-based disparities.
      i. To this end, the expert(s) should work with the TPSB to enhance ongoing efforts to monitor compliance with and the impact of the initiatives that address anti-Black racism.
   c. Comply with monitoring and accountability mechanisms identified in this report.
   d. Ensure that strategies adopted to implement this report's recommendations are thoroughly evaluated on an ongoing basis and facilitate public access to data. Evaluation may include, but not be limited to, internal audits and random compliance testing. These strategies should form part of the action plan identified in Recommendation 3 below.

Engagement

Transformative change in police practices in Toronto must be informed by community views, experiences, and perspectives. This requires meaningful engagement with Black community advisory groups and concerned

members of Black communities more generally. As set out in the report, it is clear that the TPS and TPSB have taken steps to ensure that public consultations are conducted and have the ability to inform the development of their projects.

As such, our recommendations in this area seek to build upon these efforts to help ensure that the development, implementation, and review of police practices are continually informed by voices of Black communities, in a meaningful way at the foundational level.

The OHRC recommends that:

2. The TPS and TPSB engage Toronto's diverse communities in creating an action plan to implement all the OHRC's recommendations. The action plan should also incorporate TPS's ongoing efforts to address discrimination and anti-Black racism in the Service. This will

help ensure that TPS/TPSB's policies, procedures, training, anti-racism initiatives, and accountability mechanisms are consistently reviewed and enhanced on an ongoing basis. OHRC recommends that this engagement acknowledges and be sensitive to the specific impact police practices have had on the range of lived experiences and intersectional identities that exist in Black communities. Community participation should be drawn from a variety of organizations, panels and groups, including but not limited to the Anti-Racism Advisory Panel's (ARAP), Police and Community Engagement Review (PACER), and/or the city of Toronto's Confronting Anti-Black Racism unit (CABR).

   a. In consultation with Black communities, the TPSB should consider whether this action plan should form part of the strategic plan for the provision of policing, required by s. 39(1) of the *Comprehensive Ontario Police Services Act* when it comes into force.

3. The TPSB expand ARAP's mandate to include providing ongoing advice on the implementation of the OHRC's recommendations. The TPSB should develop a process to ensure that advice from ARAP is carefully considered and informs decision-making. In order to assist with these tasks, the TPSB should ensure that ARAP is adequately resourced.

4. The TPS and TPSB work with community groups to identify the desired outcomes from the engagement process, and track the extent to which those outcomes have been fulfilled by conducting pre- and post- engagement surveys or adopting other relevant measures.

Chapter 3 – Anti-Black racism in policing in Toronto

Given this report's finding of systemic anti-Black racism, the TPS and TPSB should issue an official acknowledgement of the findings from the OHRC's Inquiry – one that is **substantive and specific**.

Acknowledgement

The OHRC recommends that:

5. The TPS and the TPSB acknowledge the findings from the OHRC's Inquiry and their impact on Black communities and individuals. The OHRC draws upon the recommendations in the *Missing and Missed Report*[1] for the foundational principle that an acknowledgement should only be made if heartfelt and accompanied by a detailed plan for action that is subject to independent monitoring as set out below. The content of the acknowledgement and action plan must be developed in partnership with Black communities.

Chapter 4 – Consultation with Black communities, community agencies, and police

Over the course of the Inquiry, the OHRC held extensive consultations with a wide range of stakeholders. This included engagements with members of Black communities and organizations that serve Black communities in various settings, including interviews, focus groups, and a policy roundtable which created a space for community members and police leaders to discuss pressing issues and potential reforms.

The OHRC also consulted with TPS leadership and TPSB and TPA representatives and conducted a survey of officers (below the rank of inspector). Each of these groups shared their concerns and views on how to address systemic discrimination.

Black Community Renewal Fund

During our conversations with Black people, we heard about the lack of trust between Black communities and the police. Much of the lack of trust stems from the trauma that follows negative interactions with the TPS. We heard strong support for the TPS taking action to address this trauma through tangible restorative measures.

The OHRC recommends that:

6. The TPS and TPSB establish a renewal fund dedicated to developing or advancing community safety and well-being initiatives for Black communities. This may take the form of allocating annually a portion of the TPSB Special Fund to organizations that serve Black communities.

Reducing the scope of police activities

Community members have consistently advised policymakers that the allocation of public safety resources does not align with community needs. For example, the top three recommendations the TPS received from communities during town hall meetings about police reform in 2020 were "defunding" the police, "de-tasking" police services and investing in mental health and addiction services. Similarly, the OHRC consistently heard concerns that certain community safety issues to which the TPS responds could be addressed more effectively by a non-policing agency.

As aptly stated in *Missing and Missed*, many want the police to give up some tasks to other public and community agencies with greater expertise, such as dealing with people in mental health crises or working with the unhoused.[2] All recommendations made in *Missing and Missed*, including those addressing these issues, were accepted by the TPS and TPSB.

In response to community-based concerns, and the current discourse on policing that calls for re-imagining the way policing is delivered, the OHRC makes the following recommendations.

The OHRC recommends that:

7. The TPS and the TPSB implement strategies to transfer[3] certain functions currently being performed by armed police officers to other public and community agencies with better expertise.
   a. In doing so, the TPS and TPSB work in collaboration with Black community organizations to identify alternative responses for calls that police are currently attending, where such attendance is likely not essential.

8. The TPS and the TPSB continue to work with the City of Toronto's Community Crisis Service (TCCS) and support efforts to expand TCCS services that focus on Black communities.

9. The TPS and the TPSB publicly support community calls to expand community-led mental health crisis responses to reduce police interactions with people in crisis.[4] Community-led mental health crisis responses should be culturally responsive to diverse communities, including Black communities.

Diversity and racial discrimination in employment

To change the culture of policing, the TPS must reflect the diversity of the communities it serves. People with lived experience of anti-Black racism can help improve internal processes and shift mindsets that have failed to address systemic racial bias in policing.

The OHRC recommends that:

10. The TPS and TPSB develop and conduct periodic workplace censuses on the extent to which Black persons are represented at all levels of the organization. The results of each census should be regularly disclosed to the public.

11. The TPS establish key performance indicators, benchmarks, and targets on their employment equity initiatives, and publicly report on these targets to the TPSB annually.

12. Criteria for taking decisions about promotions should include, where possible, an officer's skill and experience with members of Black communities and other racialized communities, and an officer's experience and demonstrated ability to de-escalate and negotiate during crisis situations and/or scenario-based evaluations. Such scenarios may be informed by the issues identified in this report.

13. The TPS and the TPSB regularly consult with the Black Internal Support Network (BISN) about the experiences of Black employees, and their views on TPS's service to Black communities. Engagement with the BISN should inform TPS initiatives aimed at providing bias-free policing. The TPS and TSPB should consider whether the feedback they receive from the BISN should be shared at a public board meeting. The decision to report on these consultations should be made in consultation with the BISN.

Chapter 5 – Stop and search (non-arrest circumstances)

An officer's authority to approach, stop, or question a civilian has been fiercely contested. The practice of carding provides the foremost example of Black people's concerns regarding the exercise of discretionary police power to stop and question, and its impact on Black communities.

The OHRC acknowledges initiatives undertaken by the TPS, TPSB, and the provincial government to engage with Black communities and revise practices in this area. This includes O. Reg. 58/16: *Collection of identifying information in certain circumstances*, which banned arbitrary stops.

Notwithstanding the existing ban on arbitrary stops, and the decision to monitor annually the number of street checks conducted by the TPS, the OHRC continued to hear significant concerns about unjust stops during our Inquiry. The Inquiry has documented significant gaps in TPS and TPSB policies and procedures regarding stops and searches that help perpetuate systemic racial discrimination.

In response to these concerns, the OHRC recommends the following actions – which go beyond the protection provided by O. Reg. 58/16, and the related policies and procedures.

The OHRC recommends that:

14. The TPS and TPSB develop and implement criteria that narrow the circumstances where TPS officers can approach or stop a person in a non-arrest scenario, and a framework for rights notification that is consistent with the OHRC's criteria in its *Submissions to the Ministry of Community Safety and Correctional Services as part of its Strategy for a Safer Ontario*.[5]

These criteria are more stringent than the criteria mandated by the Province in Ontario Regulation 58/16, *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*.

Search of persons

15. The TPS include detailed criteria in its Search of Persons procedure (01-02) for when officers may conduct "safety" searches and "frisk" searches consistent with the *Charter* and case law.

Chapter 6 – Arrests, charges, and artificial intelligence

In *A Disparate Impact*, the expert analysis of TPS charge, arrest, and release data found that Black people are grossly overrepresented in discretionary, lower-level charges, and more likely than White people to face low-quality charges with a low probability of conviction. Among the charges examined as part of the Inquiry, the charge rate for Black people was 3.9 times greater than for White people, and 7.1 times greater than the rate for people from other racialized groups.

Despite being charged at a disproportionately higher rate, Black people were overrepresented in cases that resulted in a withdrawal of charges. Black people's cases were also less likely to result in a conviction compared to cases involving White people.

In Chapter 7, we acknowledge the steps that the TPS has taken to better understand and address anti-Black racism and racial discrimination in charges and arrests. This includes extensive work to collect, analyze and report on data in this area.

In June 2022, the TPS released an analysis of its race-based data on use of force and strip searches. This included data regarding "enforcement actions," which contains data on charges and arrests. For example, the data shows Black people were 2.2 times more likely to be involved in "enforcement actions," i.e., "incidents that result in arrests, apprehensions,

diversions, tickets, or cautions for serious provincial offences, and includes those classified as suspects or subjects in occurrence records."[6]

The OHRC proposes that the TPS and TPSB address racial disparity in charges and arrests by advancing policies and procedures with respect to charges and other enforcement actions (e.g., police cautions, alternative measures). This proposal is based on the finding that TPS procedures and training do not provide sufficient guidance to officers to determine whether to lay charges, arrest, or use alternatives.

The OHRC has also explored the potential benefits of Crown pre-charge approval. Implementing Crown pre-charge approval would require involvement from the Province. As such it is addressed along with other recommendations to the Province further on.

Laying a charge

The OHRC recommends that:

16. The TPS ensure that its procedures on laying a charge require that officers approach all interactions with Black and other racialized individuals in ways that consider their histories of being over-policed,[7] and consider the use of alternatives to charges and arrests, where appropriate. This includes and builds on the officer's discretion to use informal warnings, cautions, or diversion programs.
    a. The TPS expand the use of youth and adult pre-charge diversion and restorative justice programs that allow unlawful behaviour to be addressed without formally laying a charge in appropriate circumstances. Where possible, the TPS should make referrals to culturally appropriate diversion programs and monitor the number of referrals they make to these programs.

17. The TPS regularly review and purge its data base of fingerprints, photographs, and other biometric information collected as a direct result of charges that do not result in convictions, absolute discharges, and satisfied peace bonds.

18. TPS procedures:
    a. Require that the TPS conduct equity audits of charges laid for the following provincial offences, and administration of justice charges at the unit level. These audits should monitor whether Black persons are overrepresented in:
        i. Trespassing
        ii. Out-of-sight driving offenses (including driving without a valid licence, driving without valid insurance, driving while suspended, etc.)
        iii. Failure to comply with a condition, undertaking or recognizance.
    b. Should take appropriate action to address any disparities identified.

19. The TPSB incorporate Recommendations 16, 17 and 18 into its anti- racism initiatives and accountability mechanisms related to laying a charge.

Artificial intelligence (AI)

The TPSB released a Policy on Use of Artificial Intelligence Technologies, which seeks to ensure that use of AI technologies by the TPS does not disproportionately impact Black and other marginalized communities. It is important that the TPS does not use AI technologies in ways that lead to racial discrimination.

The OHRC recommends that:

20. The TPSB implement the actions set out in the OHRC's *Submission on Ontario's Trustworthy Artificial Intelligence (AI) Framework*,[8] and more specifically, the OHRC's *Submission on TPSB Use of Artificial Intelligence Technologies Policy.*[9]
21. Until privacy and human rights assessments are conducted, and an expert in technological/algorithmic racial bias is consulted along with the Information and Privacy Commissioner and the OHRC, the TPS should limit the use of AI technologies.
22. The TPS publish detailed lists of all data inputs used for place-based predictive algorithms, or for any functionally equivalent AI technology.[10]
    a. Ensure that facial recognition software is not used when officers stop, detain or arrest individuals.[11]

b. Ensure that officers are aware of the potential racial bias that may flow from the use of AI tools, and the impact of AI on officer deployment decisions.[12] In addition, officers must be capable of implementing strategies to eliminate potential bias which may flow from the use of artificial intelligence tools.

Chapter 7 – Use of force

Police use of force against Black people is among the most controversial issues facing law enforcement across North America. Incidents where police use excessive force undermine confidence in policing and could result in an unjustified death.

Given the critical importance of this issue, the TPS and TPSB must ensure that their policies, practices, training, and review mechanisms require that TPS officers only use force as a last resort, and that any unreasonable use of force is identified and addressed with strong accountability measures. Also, the TPS and TPSB must ensure that officers use de-escalation and non-force techniques to effect compliance with police orders whenever feasible.

The OHRC recommends that:

Use of force

23. The TPS and the TPSB publicly commit to a "zero harm, zero death" approach in all interactions with civilians, in particular with Black persons and persons in crisis. The OHRC recommends that the TPSB and TPS publicly report annually on how they are satisfying their commitment, including through public reporting of disaggregated race- based statistics.[13]

24. The TPS and TPSB explore using crisis workers other than nurses as part of the mobile crisis intervention team (MCIT) to provide 24/7 coverage when nurses are not available.[14]

Use of lethal and less lethal force

Fatal encounters between civilians and the police may undermine public confidence in police services and have a traumatic impact on individuals, families, and communities. As documented in this report, Black people are disproportionately impacted by TPS use-of-force practices, including lethal force. Black people are more likely to be fatally shot by the TPS.

The OHRC has acknowledged the important steps the TPS has taken to address use of force, including an updated Incident Response (Use of Force/De-Escalation) policy, and use-of-force data collection and related action plans referred to in the body of this report.

The OHRC recommends that:

25. In keeping with the "zero harm, zero death" objective, the TPS must make every effort to avoid fatal encounters. To this end the limits placed on the discretion to use of force found in the *Criminal Code*, or training exercises should be reflected in TPSB policies and TPS procedures in order to promote consistency and intelligibility.

26. The TPS clarify the requirement to disengage found in the TPSB's De- escalation and Appropriate Use of Force policy and the TPS Incident Response (Use of Force/De-Escalation) procedure. The policy and procedure should state that disengagement includes taking the necessary time and repositioning where appropriate and safe to do so, to avoid using force.

27. In response to the over-representation of Black communities in police shootings and other lethal encounters with TPS documented in this Inquiry, TPS should:
    a. Continue to closely monitor and report on these disparities and take immediate steps to develop action plans to reduce them.
    b. Report on the effectiveness of de-escalation efforts when engaged with Black communities.

28. The TPS expand circumstances where officers should not use deadly force or shoot to include:

a. to prevent property damage or loss, to prevent the destruction of evidence, or against a person who poses a threat only to themselves and not to others.

Duty to intervene

The duty to intervene is a duty to stop other officers from using excessive force or engaging in prohibited conduct. The OHRC welcomes the TPSB's decision to implement a duty to intervene on all TPS members who observe an officer using prohibited or excessive force, or engaging in acts that constitute misconduct. As a best practice, this duty should be monitored and improved in response to the feedback provided by officers who have intervened.

As such, the OHRC recommends that:

29. The TPS monitor and evaluate the effectiveness of the duty to intervene and assess whether changes to policy or procedure are required. The monitoring should include collecting data on the number of times officers report that they have intervened and the circumstances that warranted intervention. The aggregate number of interventions should be reported to the TPSB.

Use-of-force reporting

The definitions of "use of force" that warrant reporting are too narrow, and do not reflect the realities of modern policing. For example, the OHRC's expert analysis has made important findings regarding the disparate impact of lower-level use of force on Black communities. However, lower-level use of force falls outside the scope of incidents that must be reported.

A definition that only considers use of force resulting in injury or hospitalization does not account for the mental health impact and trauma that police use of force has on communities.

The OHRC recommends that:

30. Use-of-force reporting be guided by a comprehensive definition of use of force that includes lower-level use of force.[16] Use of force that falls within the scope of this definition should be reported to a supervisor and should be included as a new category in the TPS's ongoing reporting on use of force.

31. Use-of-force reporting include the application of handcuffs or mechanical restraints, when they are used to gain compliance from an adult, outside of an arrest. All circumstances where handcuffs or mechanical restraints are used on persons under 18 should be reported.

32. Use-of-force reports capture contextual information, such as:
    a. whether the subject had or was perceived to have a mental health disability, whether the subject was perceived to be experiencing a mental health crisis, or was experiencing issues related to substance abuse
    b. whether efforts to de-escalate the incident before and after force were applied
    c. other contextual information relevant to the use of force.

33. The TPS take into account the critical issue of potential racial bias or profiling in its use-of-force analysis, and this information be reported in the Race-Based Data Collection report. For each incident of use of force, the TPS should provide the Training Analyst with documents that contain race-based data and a summary of the circumstances that led to the use of force.

34. The analysis and identification of trends from the annual use-of-force report be conducted in a manner that is consistent with the objectives of the *Human Rights Code* and the provincial *Data Standards for the Identification and Monitoring of Systemic Racism*.

Conducted energy weapons (CEWs)

Discharging a CEW should be subjected to the same investigative standards as a firearm, as use of these weapons is potentially lethal and *Code*- protected groups remain disproportionately subjected to their use.

The OHRC recommends that:

35. The TPS require an investigation into the circumstances that resulted in the discharge of a CEW, as is required under TPS Service Firearms procedure (15-03) for the discharge of firearms.

Use of force and youth

TPS procedures and TPSB policies should provide further guidance for circumstances where an officer engages a young person and considers using force.

The OHRC recommends that:

36. Officers, where possible, use de-escalation techniques that are tailored and appropriate when engaged with young persons.[17]

37. Officers seek intervention from trained mental health or child and youth professionals to address non-criminal behaviours exhibited by young persons. This is particularly important for children under age 12.

Chapter 8 – Anti-racism policies, training and evaluation

Policy on eliminating racial discrimination

The OHRC's Policy on eliminating racial profiling in law enforcement contains recommendations to address systemic anti-Black racism in policing that are relevant to the TPS. For example, the TPS and TPSB do not have a distinct policy or procedure on racial profiling. The failure to create adequate policy and procedure to prevent discrimination can contribute to racial disparities and undermine community trust in police.

The OHRC recommends that:

38. The TPSB enact a policy and direct the Chief of Police to enact a procedure on racial profiling. The policy and procedure should reflect best practices and be consistent with recommendations 15 and 27–34 in the OHRC's Policy on eliminating racial profiling in law enforcement.

39. The TPSB and TPS regularly assess proactive deployment patterns for concerns about racial profiling, consistent with section 4.2.1 of the OHRC's Policy on eliminating racial profiling in law enforcement, and that the TPSB Policy on Community Patrols be amended to include regular assessments of proactive patrol patterns.[18]

Training and education

The OHRC's Inquiry found that the TPS and TPSB have committed to study and deliver training and education on racial profiling and racial discrimination. Significant steps have been taken to create useful training on racial bias, racial profiling, and racial discrimination. Despite these steps, there continue to be gaps in TPS training and education on anti-Black racism, racial profiling, and racial discrimination that should be addressed. They include components that should form part of a TPSB policy and a TPS procedure on racial profiling.

The OHRC recommends that:

40. The TPS ensure that new recruits, current officers, investigators, and supervisors continue to receive detailed, scenario-based, human rights-focused training and education.[19]

41. Training be consistent with recommendations 48 to 50 in the OHRC's [Policy on eliminating racial profiling in law enforcement](#), and include content from the recommendations of the coroner's inquests into the deaths of Reyal Jardine-Douglas, Sylvia Klibingaitis, Michael Eligon, and of Jermaine Carby.[20,21]

Training and education development

The OHRC recommends that:

42. The TPS ensure that officer training and education:[22]
    a. Includes scenario-based learning modules to facilitate identifying racial profiling and racial discrimination in investigations, including scenarios dealing with suspect selection, detention, searches, charges, arrests, use of force, and conflict de-escalation.
    b. Is connected to policies and procedures on racial profiling and racial discrimination, and specifically identifies and counters anti-Black racism in stops, questioning and searches, charges and arrests, and use of force.
    c. Incorporates concepts, principles, and tools from the TPS's human rights and anti-Black racism specific training into dynamic simulations on stops, questioning and searches, charges and arrests, and use of force.[23]

43. The TPS include active and ongoing consultation with Black and other racialized communities in its development and implementation of training and educationIncluding in areas that have a disproportionate impact on Black communities, such as charges and arrest, and use of force.

44. The TPS develop and implement ongoing, detailed and scenario-based human rights-focused training to new recruits, current officers, investigators, and supervisors on how to mitigate the use of charges as outlined in *A Disparate Impact*. [24]

45. Training should include alternatives to charges, such as issuing informal warnings, cautions or diversion, and that training inform officers how to approach all interactions with Indigenous, Black, and other racialized persons in a way that considers their histories of being over-policed, and using alternatives to charges and arrests, where appropriate.

Officer certification and program evaluation

The OHRC recommends that:

46. The evaluation of officers' performance in each component of training includes a benchmark to pass and remedial measures be established for officers who do not pass.[25]

47. Officers be required to obtain certification in de-escalation as they are required to do for firearms and CEWs. Officers who cannot effectively de-escalate incidents should not be allowed to carry firearms.

48. Training be evaluated for effectiveness in achieving the objectives, including systemic outcomes, such as reducing racial disparities or reducing implicit bias.[26] The evaluation should include outcome measures pertaining to disparity reductions (or a lack thereof) in stops, questioning, searches, charges and arrests, use of force, and other police practices. The OHRC recommends that the TPS publicly report on the results of the evaluations.

Peer intervention

The OHRC recommends that:

49. The TPS monitor and evaluate the effectiveness of their peer intervention program. The monitoring process should include feedback from officers who have been involved with incidents where the duty to intervene was engaged.

Chapter 9 – Accountability and monitoring mechanisms

Legal enforceability

Based on the Inquiry's findings, the OHRC has concluded that to ensure real change, the TPS and TPSB must commit to specific, systemic, and concrete actions that are legally enforceable. The decades of reports and calls for action from Black communities show that if the TPSB and TPS are committed to change, they must legally bind themselves to that change.

The OHRC has proposed legally binding and enforceable remedies as an accountability measure that will encourage the TPS and TPSB to work with the OHRC and the community to implement the recommendations that flow from this Inquiry.

The OHRC recommends that:

50. The TPS and TPSB formally commit to legally binding enforcement measures that are effective, expeditious, and to the fullest extent possible, non-adversarial. The TPS and TPSB should adopt an approach for implementation of the OHRC's recommendations in this report, developed in consultation with the OHRC and Black communities. Such an approach should be informed by the animating and guiding principles of:
    a. Promoting timely and effective implementation of the OHRC's recommendations.
    b. Continuing Community Engagement and Involvement. This approach will continue to reflect the commitment of the TPS, TPSB and OHRC to robust community engagement and involvement. The TPS, the TPSB and any panels or tables would approach their work in a way that is consistent with that commitment.
    c. Promoting and Supporting TBPS's Oversight Capacity. This approach is premised on building TPBS's capacity to ensure effective oversight and accountability of the Service, including its ongoing evaluation and monitoring of compliance, and providing interim support to the TPSB in supplying that oversight and accountability as its capacity is built up.
    d. Ensuring that the composition of any panels, tables or rosters of experts will be informed, by lived experiences, subject matter knowledge and/or expertise in anti-Black racism and policing.
    e. Promoting consensus building. This approach is designed to enhance and promote collaborative solutions, involving communities, the OHRC, the TPS and the TPSB, wherever possible generally and specifically, to issues respecting anti-Black racism.

51. In order to address issues with respect to implementation the OHRC further recommends:
    a. Creating an independent monitoring and evaluation system for the implementation of the recommendations that involves an effective and expeditious legally binding enforcement measure.

Data collection

From adopting a specific policy on race-based data collection, to collecting data on use-of-force reports, strip searches, charges, arrests, releases, and youth diversions, the TPS and TPSB have taken significant steps in data collection, as detailed in Chapter 9. There are, however, gaps that need attention.

For data collection to address systemic racism, the data must enable robust analysis of the full range of police–civilian interactions, identify racial disparities, and provide findings that can be decisively acted on.

As discussed in this report, gaps in the current policy remain and include:

- data collection on pedestrian stops occur only if the stop results in a written warning, ticket or arrest
- use of force that does not require medical attention (lower-level use of force)
- Phase 2 of the data collection strategy, which does not include all stops, including investigative detentions, protective searches (formerly Level 1 searches), and frisk searches
- data on intersecting *Code* grounds such as race and mental health.

The OHRC recommends that:

52. The TPSB amend its Race-Based Data Collection, Analysis and Public Reporting Policy (RBDC Policy) to direct the TPS to collect, analyze and publicly release human rights-based data on an annual basis on the full range of police–civilian interactions, including stop and search activities, traffic and pedestrian stops, charges, arrests, releases, and use of force (including lower-level use of force).[27]

53. The TPSB consider the OHRC's methodology in *A Disparate Impact, A Collective Impact* and Dr. Wortley's report, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options*, in developing its data collection and analysis.[28]

54. Where the data reveals notable[29] race-based disparities in service delivery, the TPS take immediate steps to inform the TPSB and enact an action plan to eliminate the disparity within a set timeline.[30] The TPSB should require the TPS to publicly report on the steps taken to address the disparity.

55. The TPS regularly evaluate officers on the extent to which they fill out all required data fields.

56. The TPS work with external experts to develop procedures for auditing the accuracy of race reported by officers in documents such as Use of Force Reports and officers' notes, verifying them against other sources of information that identify the subject's race, e.g., body-worn camera images, driver's licence photos, or civilian self-reported racial identity.

Stop and search incidents (including all traffic and pedestrian stops)

The OHRC recommends that:

57. The TPS collect data related to stop and question incidents. The OHRC recommends that the data collected be consistent with recommendations 21 and 22 on stop and search in the OHRC's Policy on eliminating racial profiling in law enforcement.[31]

Charge, arrest, and release

The OHRC recommends that:

58. The TPS collect and publicly report on data related to all charge, arrest, and release decisions. This should include demographic data about the person (race, Indigenous ancestry, age, gender, presence of a mental health disability), factors related to the decision to detain or release an individual, and information on decisions not to charge a person, such as the use of diversion programs. The TPS should review Dr. Wortley's report on *Racial Disparity in Arrests and Charges: An analysis of arrest and charge data from the Toronto Police Service* (2020), and include relevant missing data that was flagged.

59. The TPS track and report disaggregated data on the number of charges that are diverted from the court system.

Use of force

The OHRC recommends that:

60. The TPS collect data on all use-of-force incidents, including lower-level use-of-force incidents where a civilian is not injured, or where physical force is used that does not require medical attention. The collected data

should be consistent with recommendation 31 regarding use of force in the OHRC's Policy on eliminating racial profiling in law enforcement.[32]

Data and performance management

The OHRC recommends that:

61. The TPSB amend its Race-Based Data Collection, Analysis and Public Reporting Policy to remove the prohibition on the use of race-based data in performance management, and direct the TPS to use the data collected when evaluating officer performance.
    a. Supervisory reviews of use-of-force incidents be connected to officer performance reviews. In this regard the OHRC adopts the jury's recommendation on this subject from the inquest into the death of Jermaine Carby.[33]

Detention

The OHRC recommends that:

62. Based on the Supreme Court of Canada's decision in *R v. Le*, and its findings with respect to psychological aspects of encounters with police, the TPS collect race-based data on the number of persons who have been detained by police.

Data privacy

Privacy considerations for race-based data are always important. This is especially true for data collected in the absence of any regulatory framework, as was the case with street check data for several years leading up to 2017. Further, as noted in this report, the TPS and TPSB failed to purge historical street check data, much of which is the product of racial profiling.

The OHRC recommends that:

63. The TPSB consult with the Information and Privacy Commissioner of Ontario (IPC) to develop appropriate privacy guidelines for the collection, analysis, and public release of the human rights-based data described above.

64. TPS destroy personally identifiable information from carding/street check data collected before January 1, 2017, subject to any active court orders that may require the retention of the personal information in the data.

Early intervention systems (EIS)

Early intervention systems (EIS), also known as early warning systems, capture race-based data to alert supervisors to potential performance issues and misconduct concerns. In addition, these systems offer "resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness."[34]

The EIS should receive and integrate member information to identify any patterns of behaviour or incidents that are indicative of at-risk behaviour. In addition, the information captured by the EIS should assist with the regular supervision of members.[35] The EIS may also be used to track indicators of officer wellness and prevent harm to officers and members of the public.

EIS typically have remedial objectives and as such, the output from these systems are not intended to trigger disciplinary measures. Nonetheless, there are opportunities for police services to use information from an EIS to inform the eventual imposition of discipline if necessary.

Recognizing that the indicators of racial discrimination may vary by police officer, platoon, unit or division, the range of relevant data points is specified below.

The OHRC recommends that:

65. The TPS EIS track indicators of racial discrimination or racial profiling by individual officers and platoons/units/divisions.

66. The TPS build on its existing EIS to capture all necessary information to alert supervisors to individual and platoon/unit/division conduct for potential racial discrimination that needs to be addressed.

This system should capture data and flag patterns related to racial disproportionalities and disparities[36] in the areas identified in:

- the OHRC's Inquiry report
- TPSB's policy on Race-Based Data Collection, Analysis and Reporting
- negative findings in HRTO and court decisions where racial discrimination is at issue, and
- *Charter* violations.

67. The TPS ensure that the EIS captures the information outlined in the recommendation 35 and 36 for EIS in the OHRC's [Policy on eliminating](#) [racial profiling in law enforcement](#).[37]

68. The TPS use the EIS in performance management and progressive remedial action, consistent with labour relations requirements, by:

   a. Establishing and implementing EIS performance indicators, including through internal benchmarking, that will trigger supervisory review and referrals to Professional Standards.

   b. Developing EIS indicators for supervisors based on the EIS performance of their unit.

   c. Maintaining data on each officer's use of force, including each discharge of a firearm or CEW, and tracking this against established benchmarking.[38]

   d. Requiring command staff and other supervisors to regularly review EIS data to evaluate performance of all officers.

   e. Requiring that remedial action be considered when an officer is flagged based on EIS performance indicators or audits of officers' body-worn and in-car camera recordings. Remedial action includes but is not limited to additional training and education, reassignment, counselling, heightened monitoring, and heightened supervision.

      i. The remedial approach should include progressive performance management where appropriate.[39]
      ii. The Chief of Police should report to the TPSB on the remedial or disciplinary measures used on officers based on, among other factors, EIS data on racial discrimination, subject to the confidentiality provisions of the *Police Services Act*.[40]
      iii. Positive conduct by an officer included in a supervisor's review should be recognized.

   f. When remedial efforts have not successfully addressed concerns about a pattern of racial disparity in an individual officer's activities, supervisors should consider if it is appropriate to refer the officer's conduct to Professional Standards.
69. The Chief of Police require supervisors to thoroughly review and document use-of-force incidents immediately after the incident occurs to determine if there were credible non-discriminatory explanations for use of force. This is subject to the jurisdiction of the Special Investigations Unit.

   a. Where supervisors do not identify a credible non-discriminatory explanation, the officer's conduct and supervisor's concerns should be flagged in the EIS and referred to Professional Standards for a full investigation.

Body-worn cameras

The TPSB and TPS consulted the OHRC on body-worn cameras (BWCs) to inform the development of the TPSB policy and TPS procedure in Fall 2020. In addition, the OHRC made written submissions setting out concerns with BWCs.[41] In light of the TPS and TPSB's decision to move forward with the implementation of BWCs, the OHRC recommends the following policy guidelines:

The OHRC recommends that:

70. The TPSB amend its policy on body-worn cameras (BWC) to:
   a. Specify the frequency of reviews and require public reporting on them.
   b. Create a process whereby community advisory groups can review, on a random basis, body-worn and in-car camera recordings to assess if officers are providing a service environment free from racial discrimination. This process is similar to that adopted by the Independent Scrutiny of Police Powers Panel in Avon and Somerset England.[42] Such a process should ensure that reviews do not interfere with ongoing investigations or legal proceedings.
   c. Require public reporting on the quantity and quality of supervisors' audits related to discrimination every year. In this reporting, identify how many instances of potential racial bias were identified, how many internal conduct complaints were initiated based

on reviewing BWC footage, and the nature of any remediation or discipline of individual officers that followed. The recommendation builds upon the TPSB's recommendation that

supervisors regularly review recordings for implicit or explicit discrimination.

71. The TPSB direct the Chief of Police to amend procedures on the use of BWCs in line with the preceding policy prescriptions.

Officer accountability

As employers, it is important to fully investigate complaints related to discrimination. Organizations should have a clear, fair and effective mechanism for receiving, investigating. and resolving complaints of discrimination, and to ensure that human rights concerns are brought effectively to the attention of the organization.

During the Inquiry, the OHRC identified a lack of effective monitoring and accountability for anti-Black racism and racial discrimination of Black people by the TPS and TPSB. To address this concern, the Chief of Police must broadly exercise their discretion to investigate and address potential instances of misconduct in a fair and transparent way. The TPSB must review the administration of complaints and establish appropriate disciplinary guidelines.

Monitoring and investigations

The OHRC recommends that:

72. The TPSB enact a policy that requires the Chief of Police to confirm that the following steps are taken:[43]
    a. On providing notice to the subject officer, proactively investigate the race of the alleged victim of the misconduct, potential racial profiling or discrimination against Black individuals, even where claims of racial profiling or discrimination are not explicitly raised by a complainant, witness, SIU Director, OIPRD,[44] LECA, or any legal decision involving a *Charter* breach by the TPS.
    b. Investigate all concerns about officer misconduct raised by the SIU Director in letters to the Chief of Police, and conduct a full investigation into all issues raised.
        i. Automatically initiate a Chief's complaint investigation (if an investigation has not already been undertaken) when findings or comments in decisions of courts or tribunals, correspondence from the OIPRD, LECA, SIU Director, or any legal decision involving a *Charter* breach by the TPS that reflect conduct potentially consistent with anti-Black racism, racial profiling, or discrimination.
    c. Implement a duty to report procedure, which calls on officers to self-report negative findings about their testimony, or conduct in decisions of courts or tribunals, correspondence from the OIPRD, LECA, SIU Director, or any legal decision involving a *Charter* breach.
    d. Where officers report these findings, a Chief's complaint investigation should be initiated.
    e. Establish a process within the Service to search and track negative findings about an officer's testimony or conduct in decisions of courts or tribunals, correspondence from the OIPRD, LECA, SIU Director, or any legal decision involving a *Charter* breach that reflects conduct consistent with anti-Black racism, racial profiling, or discrimination. This process should help supervisors review these concerns in one centralized location.
    f. Track individual findings and trends and hold officers accountable for such conduct using appropriate remedial or disciplinary measures.[45]
    g. Require that all Professional Standards investigators are trained to identify violations of the *Human Rights Code*, including potential racial profiling or discrimination.
    h. Direct the Chief of Police to develop a procedure to monitor all *Charter* breaches that reflects conduct consistent with anti-Black racism, racial profiling, or discrimination committed by TPS officers, and report these decisions on an annual basis at a public board meeting.[46]

Complaints administration

The OHRC recommends that:

73. The TPSB establish policies to:
   a. Review and publicly report annually on the Chief of Police's administration of:
      i. Internal complaints, officer's testimony or conduct in decisions of courts or tribunals, correspondence from the OIPRD, LECA, SIU Director, or any legal decision involving a *Charter* breach that reflects conduct consistent with anti- Black racism, racial profiling, or discrimination, and when officer conduct is consistent with racial profiling or racial discrimination.
      ii. Administrative investigations (formerly called Section 11 reports).[47]

   b. Request and review decision letters from the SIU Director to the Chief of Police. The TPS Special Investigations Unit Procedure (13-16) should be amended to direct the TPS to include a copy of the SIU Director's Letter to the Chief of Police with the administrative investigation when it is sent to the TPSB.

   c. Direct the Chief of Police to develop a procedure that sets out the steps to be followed when the Crown Attorney's Office reports that an officer has been dishonest as a witness, or where a court, tribunal, or complaint body finds that the officer engaged in racial discrimination.

Performance management

The OHRC recommends that:

74. The Chief of Police require that performance management includes:
   a. For officers:
      i. A written assessment of whether officers violated any procedures including those related to body-worn cameras.
      ii. An evaluation of how accurately the officer reports use-of- force incidents.
      iii. An evaluation of how well officers grasp and implement training on racial profiling, racial discrimination, and anti- Black racism,[48] including how well officers de-escalate situations[49] and identify appropriate levels of force to use.[50] This evaluation should also consider any tribunal or court findings of discrimination or other behaviour that contravenes the *Code* or the *Charter*.
   b. For supervisors:
      i. An assessment of whether use-of-force incidents and body-worn camera footage were adequately reviewed, and whether misconduct by officers is met with appropriate corrective and disciplinary action.

Performance reviews

The performance review process must actively address systemic discrimination in police services. Motivating police practices that will generate better outcomes should be a key objective of the review process.

The OHRC recommends that:

75. The TPS revise the process for performance reviews to:
   a. Establish an explicit requirement that interactions with people in crisis be considered.
   b. Place a greater emphasis on de-escalation skills such as communication, empathy, proper use of force, and use of specialty teams where required.
   c. Utilize an officer's use-of-force reports when assessing training needs and suitability for particular job assignments to the extent possible subject to any restrictions created by Reg. 926/90.[51]
   d. Consider creating incentives for using alternative measures that divert charges from the criminal court system.

Accountability

The OHRC recommends that:

76. The TPSB establish policies that set out circumstances where the Chief of Police should consider discipline, up to and including dismissal, when officers' behaviour is found to be consistent with racial discrimination, in accordance with the established disciplinary

process

77. The TPS and the TPSB consider officer behaviour found by a court or tribunal to be consistent with racial discrimination and substantiated by internal investigations as a negative factor in promotion decisions.

78. The TPS develop a mechanism for officers to report discrimination that protects the confidentiality of the reporting officer, subject to any legal restrictions.[52]

79. The TPS take proactive steps to ensure that officers who initiate complaints against other members are not subject to reprisal. These steps may include assessing the workplace climate and following up with the complainant.

TPS/TPSB use of inquest recommendations

The OHRC recommends that:

80. The TPSB conduct a comparative analysis of recommendations from the Jardine-Douglas, Klibingaitis and Eligon (JKE) inquest and Loku inquest to identify any gaps in implementing the JKE recommendations, and:
    a. Determine why some inquest recommendations continually appear as areas of concern.
    b. Work with an independent expert and ARAP to fully assess the implementation of the recommendations from these and other similar inquests.
    c. Demonstrate they have meaningfully consulted on this analysis with Black communities.

81. The TPSB develop a policy that sets out the steps for receiving, implementing and publicly reporting on all recommendations from coroner's inquests directed to the TPS or TPSB, or recommendations directed to all police services in Ontario.

Transparency

The OHRC recommends that:

82. The TPSB establish a policy that directs the Chief of Police to provide the TPSB annually with all instances of racial profiling and racial discrimination found to be committed by police officers through decisions of the HRTO, the TPS Disciplinary Tribunal, courts and other tribunals, along with details of what corrective or disciplinary actions were taken in response, subject to the confidentiality provisions of the *Police Services Act* (*PSA*).[53]

This information should also be publicly released annually in a manner that is consistent with the confidentiality provisions of the *PSA* and any subsequent legislation such as the *Comprehensive Ontario Police Services Act* (COPSA).

83. The TPSB develop a policy on the public release of aggregated information about officer activities, and that this information be released in a way that enables the public to understand how officers allocate their time, including a breakdown of the time spent responding to calls, engaging in proactive investigations, and traffic enforcement.[54]

84. The TPSB develop a policy on the annual public release of information about the calls for service it receives, and that this information be released in a way that enables the public to understand how many calls for service are related to social issues such as mental health, addictions, homelessness or other non-criminal matters.

The TPS should also release information about the nature of the response provided by the police service[55] and the amount of time required to address the call.

Multi-year action plan

The OHRC recommends that:

85. To successfully implement these recommendations, the TPS create and publish a multi-year action plan that incorporates the OHRC's recommendations from this Inquiry report, *From Impact to Action*, with timelines to implement all recommendations.

86. The TPS and TPSB consult with the ARAP and CABR to establish this action plan before final approval by the OHRC.

Recommendations relevant to the Province of Ontario

The OHRC recognizes that Ontario fulfills an essential role in establishing the legislative and regulatory framework which governs police services and that the TPS and TPSB operate in, and the TPS and TPSB may not have jurisdiction in some instances to enact necessary change without the assistance of the provincial government.

To borrow the words of the Auditor General's conclusion, a whole-of- government and whole-of-community approach is needed to address many of the issues that police respond to, and investment in social service infrastructure and alternative strategies is required.[56] In addition, these recommendations can impact other police services across Ontario.

Stop and search – restricting officers' discretion to approach individuals in non-arrest scenarios

While O. Reg. 58/16: *Collection of Identifying Information in Certain Circumstances* has banned arbitrary stops, as discussed in Chapter 6 of this report, the OHRC continues to have significant concerns about unjust stops.[57]

The OHRC recommends that the TPSB urge the Province of Ontario to:

87. Develop and implement criteria that narrow the circumstances where officers can approach or stop a person in a non-arrest scenario, and create a framework for rights notification that is consistent with the OHRC's *Submissions to the Ministry of Community Safety and Correctional Services as part of its Strategy for a Safer Ontario.*[58] These criteria are more stringent than the criteria mandated by the Province in O. Reg. 58/16.

Charges

The OHRC recommends that the TPSB urge the Province of Ontario to:

88. Implement Crown pre-charge approval before laying a criminal charge.

89. Ensure that assistant Crown attorneys are trained on the historical barriers faced by Black communities, the presence of systemic racial discrimination in the criminal justice systems, and alternatives to charges that can be used in appropriate circumstances.

90. Expand initiatives that create alternatives to charges such as judicial referral hearings, community justice centres, and embedded Crown counsel.

Use of force

The OHRC recommends that the TPSB urge the Province of Ontario to:

91. Review the use-of-force weapons provided to front-line officers and consider whether there are situations province-wide where officers can be deployed with non-lethal weapons, instead of lethal use-of-force options such as firearms.

92. Evaluate the Public-Police Interactions Training Aid in consultation with, experts and *Code* protected groups including Indigenous and Black communities and persons living with mental health or addition issues. This evaluation should assess whether the introduction of

the Training Aid in 2023, has helped to reduce use of force rates for Indigenous and Black communities. This assessment should consider data on police use of force collected pursuant to the *Anti-Racism Act*.

The findings from this evaluation should be used to develop leading practices that are used to update the Training Aid.

Data collection

The OHRC recommends that the Province of Ontario:

93. Require police services province-wide to collect data in a manner consistent with these recommendations, requirements established by the *Anti-Racism Act*, and the objectives of the *Human Rights Code,* as part of the TPSB's ongoing engagement with the province on use of force.

94. Mandate province-wide race-based data collection, analysis, and reporting across the spectrum of officer activities, including stop and search practices, charges and arrests, and use of force*.*

Early intervention systems (EIS)

The OHRC recommends that the Province of Ontario:

95. Mandate the implementation of early intervention systems consistent with these recommendations provincewide.[61]

Artificial intelligence

The OHRC recommends that the Province of Ontario:

96. Establish legislation and regulations to govern the development, use, implementation, and oversight of artificial intelligence in policing consistent with the OHRC's Submission on TPSB Use of Artificial Intelligence Technologies Policy (i).[62]

Policing standards

The OHRC recommends that the Province of Ontario:

97. Develop standardized key performance indicators and assessment models related to efforts to address anti-Black racism in policing. These standards should be informed by consultations with the OHRC, the Anti-Racism Directorate, and input from Indigenous, Black, and other racialized communities across the province.

Performance management

The OHRC recommends that the Province of Ontario:

98. Amend the *Police Services Act* and/or the *Community Safety and Policing Act*, 2019,[63] to include greater transparency on police discipline.

For example, there should be public reporting on cases that are addressed through informal discipline.[64]

a) Amend restrictions in Reg 926/90 that prevent use of force reports from being used to address the full range of officer performance issues.

99. Amend the police as a witness section of the Crown Prosecution manual to address findings of racial discrimination, racial profiling and anti-Black racism made against officers.

Where the Prosecutor becomes aware of credible and reliable information that an officer has been found to have engaged in racial discrimination and/or racial profiling, or a *Charter* breach that reflects conduct consistent with racial discrimination and/or racial profiling, the Prosecutor should direct the matter to the Crown attorney, who will in turn notify the Chief of Police.

Comprehensive Ontario Police Services Act (COPSA)

The OHRC recommends that the Province of Ontario:

100. Develop regulations in the *COPSA* that will set out circumstances where termination or suspension without pay should be considered, including instances where a court or tribunal or disciplinary proceeding finds that an officer has engaged in serious misconduct.

The *COPSA* should include specific reference to misconduct related to racial discrimination or anti-Black racism as considerations when assessing whether to terminate or suspend without pay.[65]

Reducing the scope of policing activities

The OHRC recommends that the Province of Ontario:

101. Publicly review civilianizing non-emergency police functions provincewide.[66]

102. Amend section 17 of the *Mental Health Act* to facilitate non-police responses to issues related to mental health, substance use.[67]

The OHRC recommends that the Province of Ontario work with the TPS and TPSB to assist them in:

103. Renewing efforts to achieve their goal of making the mobile crisis team available 24 hours/7 days a week, as stated in the 81 recommendations arising from the *Police Reform* Report.

Specifically, the OHRC encourages the TPS and TPSB to further engage Ontario's Ministry of Health to achieve 24-hour MCIT coverage across Toronto.

The OHRC recommends that:

104. Funding requests made by the TPSB and TSP pursuant to recommendations[68] from the Auditor General's report *A Journey of Change: Improving Community Safety and Well-Being Outcomes* explicitly request funding to address the well-being of Black communities, and other *Code*-protected groups that have been disproportionately burdened by police interactions as documented in this Inquiry.

Special Investigation Unit investigations

Pursuant to section 11 of O. Reg. 267/10 under the *Police Services Act*, municipal police chiefs are required to investigate any incident with respect to which the Special Investigation Unit SIU has been notified, subject to the SIU's lead role in investigating the incident. Chiefs are also required to produce a copy of their investigative report to their police services board. Boards have the discretion to make these reports public.

The OHRC recommends that:

105. Reports by Chiefs of Police related to investigations of incidents where the SIU has been notified under section 11 of O. Reg. 267/10 of the *Police Services Act*, must be routinely disclosed to the public, subject to the confidentiality provisions of the *PSA*.[69]

Recommendations to the Special Investigations Unit

A Collective Impact, the OHRC's first Inquiry report, included analysis of data obtained by the OHRC from the Special Investigations Unit (SIU). In addition, the OHRC met with Director Joseph Martino.

Through this work, several recommendations flowed directly to the TPS and TPSB.

The OHRC recommends that the SIU:

106. As part of its analysis of its race-based data from 2020 onwards, continue to monitor whether there are racial disparities in the charge rate, and take steps to address them if they occur. The SIU should consider the OHRC's analysis in *A Collective Impact* in this analysis.
107. Require that all investigators receive training and education on how to identify anti-Black racial discrimination during their investigations. The training should occur on a regular basis and address direct and indirect forms of racial discrimination or unconscious bias.

Appendix 1 Endnotes

1 Report of the Independent Civilian Review into Missing Person Investigations https://www.tps.ca/chief/chiefs-office/missing- and-missed-implementation/report-independent-civilian-review-missing-person-investigations/

2 *Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations*, vol III (Toronto Police Services Board, 2021) at 694, online (pdf): *The Honourable Gloria J. Epstein, Independent Reviewer*

<https://www.tps.ca/media/filer_public/34/ba/34ba7397-cbae-4f44-8832-cd9cb4c423ca/7-1ed3bb5-65a5-410e-a82f- 3d10f58d0311-pdf>

3 A KPMG audit of the TPS advanced civilianizing as a way to respond to demands placed on the service. The audit recommends the following: "Conduct service-wide review of all positions, job descriptions and performance expectations within TPS against business requirements and the need to maintain a critical mass of sworn capability. This will determine which positions require uniform skills and/or are a core police service in order to highlight roles to be considered for civilianization, with default outcome to outsource if option is determined to be more cost-efficient and achieve a better outcome than the status quo." In addition, KPMG's review notes that other large cities have civilianized services formally performed by police. For example:

- City Auditor in San Jose, CA: recommended that San Jose PD consider civilianizing some investigative duties and cold case roles.
- San Francisco Police: hired 16 civilians to focus on property crimes, freeing up uniformed officers for other critical crimes, resulting in salary differential of up to $40,000 per person.
- Durham, UK: civilian volunteers are used to assist police officers in canvassing neighbourhoods after violent crimes, patrolling shopping centres during busy holiday seasons and conducting property checks for vacationers.
- Edmonton and Waterloo Regional Police use mixed civilian and sworn teams for crime scene and criminal investigation.

See Toronto Police Services Board, *Opportunities for the Future for the Board's Consideration* (December 2015) online (pdf): www.tpsb.ca/KPMG%20-%20Comprehensive%20Organization%20Review%20-

%20Potential%20Opportunities%20for%20the%20Future%20Report%20to%20the%20TPSB%20(FINAL)%2017Dec%202015.pdf- TPS's has implemented the following programs which civilianize core services: *911 Call Diversion Project*: TPS and the Gerstein Crisis Centre, a civilian based organization, will work, "collaboratively, but distinctly, to assist in the diversion of non-emergency mental health related calls away from a police response." This pilot program was created in response to the 81 recommendations in the Police Reform Report. (See: Toronto Police Services, *9-1-1 Call Diversion Project* (November 2021) https://www.tps.ca/media-centre/stories/9-1-1-call-diversion-project/.) Traffic Agent Program: According to the *Highway Traffic Act*, only police officers are allowed to direct traffic at signalized intersections. In

response TPS worked with the City of Toronto to have traffic agents appointed as special constables though the Traffic Agent Program. Traffic Agents have the authority to manage traffic at all intersections in Toronto in place of the paid duty officers. (See: City of Toronto, *Traffic Agent Program*, https://www.toronto.ca/services-payments/streets-parking- transportation/traffic-management/traffic-agent-program/). TPS has also created a District Special Constable position that can be responsible for transportation of detainees and apprehended persons, report taking. The OHRC acknowledges the TBSB's Letter of January 20, 2021, to the Federal Ministry of Health, the Provincial Ministry of Health, and the City of Toronto, expressing the Board's request for additional, sustained investment for community-based mental health and addictions services in Toronto. The letter responds to recommendation 11 in the Police Reform Report.

4 This includes the Toronto Community Crisis Service (TCCS) launched by the City of Toronto. See: https://www.toronto.ca/community-people/public-safety-alerts/community-safety-programs/toronto-community-crisis- service/

5 Ontario Human Rights Commission, *Strategy for a Safer Ontario – Submission to the Ministry of Community Safety and Correctional Services* (29 April, 2016) online: <Strategy-for-a-Safer-Ontario---OHRC-submission-to-MCSCS-|-Ontario-Human-Rights Commission>.

6 Toronto Police Service: Race-Based Data Collection Strategy, *Use of Force: Measurement & Outcomes RBDC Video 4 Transcript*, https://www.tps.ca/media/filer_public/b9/f4/b9f492b5-8e11-450a-af6e-deae2658010b/1ec05b46-427f-41eb-8697- cd12e95dad0b.pdf

7 African Canadian Legal Clinic, *Civil and Political Wrongs: The Growing Gap Between International Civil and Political Rights and African Canadian Life* (June 2015) at 12, online (pdf): <(rmozone.com)> "In the past, stereotypes of Black people were used to justify slavery and segregation. Today they provide the basis for discriminatory policies and practices that violate the civil and political rights of African Canadians. These include the over-policing of African Canadian communities, police brutality, disparities in sentencing and policing accountability institutions absolving law enforcement agencies of wrong-doing when the victim is African Canadian."

7 The President's Task Force on 21st Century Policing underscored the importance of exploring alternatives to charges in their recommendations. Recommendation 2.2.1 states: "Law enforcement agency policies for training on use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate." See: President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, (May 2015) at 20, online (pdf): (usdoj.gov); some precincts in and around Seattle have implemented a pre-booking diversion strategy; also see the Law Enforcement Assisted Diversion program. The program gives police officers the option of transferring people arrested on drug and prostitution charges to social services rather than sending them deeper into the criminal justice system. National Institute of Corrections, *Jail Alternatives* (U.S. Department of Justice) online:<https://nicic.gov/tags/jail-alternatives>. Police discretion in Toronto is very much applied to charge/no charge decisions. It is common for the TPS to clear incidents without issuing charges. For example, in 2019, 21.4% of cleared Criminal Code incidents (excluding traffic) in Toronto (9,043 out of 42,221) were "cleared otherwise." Statistics Canada, *Table: 35-10-0180-01: Incident-based crime statistics, by detailed violations, police services in Ontario,* (29 July 2013), online: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510018001>

As the Canadian Centre for Justice Statistics explains: "There are instances where police may clear (or solve) an incident, but do not lay criminal charges or recommend such charges to the Crown. For an incident to be 'cleared otherwise,' the incident must meet two criteria: 1) there must be at least one charged/suspect chargeable (CSC) identified, and 2) there must be sufficient evidence to lay a charge in connection with the incident but the person identified is processed by other means," Canadian Centre for Justice Statistics, *Revising the classification of founded and unfounded criminal incidents in the Uniform Crime Reporting Survey,* Catalogue No. 85-002-X (Statistics Canada, 12 July 2013) at 7, online (pdf): <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54973-eng.pdf>. Cleared otherwise decisions can be made for a variety of reasons, including "departmental discretion" (*ibid*. 5, Figure 1). This recommendation rests on the proposition that this discretion should be exercised in a way that counteracts current patterns of race-specific over-charging by the TPS.

8 Ontario Human Rights Commission, *Submission on Ontario's Trustworthy Artificial Intelligence (AI) Framework* (June 2021) online: (ohrc.on.ca)

9 Ontario Human Rights Commission, *Submission on TPSB Use of Artificial Intelligence Technologies Policy* (September 2021) online: Submission-on-TPSB-Use-of Artificial-Intelligence-Technologies-Policy-|-Ontario-Human-Rights-Commission-(ohrc.on.ca) 10 Ontario Human Rights Commission, *Policy on eliminating racial profiling in law enforcement* (Government of Ontario, 2019) at section 4.2.6. Artificial intelligence, online (pdf): Eliminating-Racial-Profiling-in-Law-Enforcement-(ohrc.on.ca) which outlines why these dimensions of predictive policing may feed, or do feed, into racially discriminatory policing.

11 "The OHRC holds the view that FR [facial recognition] is not appropriately regulated under existing law... Yuan Stevens of Ryerson University and Sonja Solomun of McGill University have observed: In Canada, it is currently possible to collect and share facial images for identification purposes without consent, and without adequate legal procedures, including the right to challenge decisions made with this technology." See: Ontario Human Rights Commission, *OHRC comments on IPC draft privacy guidance on facial recognition for police agencies,* (November 19, 2021) online <https://www.ohrc.on.ca/en/news_centre/ohrc- comments-ipc-draft-privacy-guidance-facial-recognition-police-agencies>; Also see: Office of the Privacy Commissioner of Canada, *Privacy Guidance on Facial recognition for Police Agencies* (May 2022)

online: <https://www.priv.gc.ca/en/privacy- topics/surveillance/police-and-public-safety/gd_fr_202205/> Canada's federal, provincial and territorial privacy commissioners are of the opinion that the current legislative context for police use of FR is insufficient. In the absence of a comprehensive legal framework, there remains significant uncertainty about the circumstances in which FR use by police is lawful."

> i. In October 2022, The Global Privacy Assembly, *Resolution on Principles and Expectations for the Appropriate Use of Personal Information in Facial Recognition Technology* called for, ""...clear and effective accountability mechanisms", including "clear governance and risk mitigation policies for all uses of facial recognition."

12 Ontario Human Rights Commission, *Policy on eliminating racial profiling in law enforcement* (2019) at 4.2.6. Artificial intelligence 46–49, online (pdf): Eliminating Racial-Profiling-in-Law-Enforcement-(ohrc.on.ca)

13 In accordance with a recommendation in the Honourable Frank Iacobucci's report on Police Encounters with People in Crisis, the TPS and Toronto Mayor John Tory agreed to adopt a "zero death/zero harm" commitment to preserving the lives of persons in crisis. The TPS should adopt this objective for all civilians, but should place particular emphasis on interactions with Black and other racialized persons and persons in crisis, as these groups are over-represented in encounters with the police that result in the use of lethal force. As part of this strategy, the TPS has explored the use of less lethal use of force options. See: An Independent Review Conducted by The Honourable Frank Iacobucci for Chief William Blair of the Toronto Police Service, *Police Encounters with People in Crisis* (2014) at 8, 126, online (pdf): <police_encounters_with_people_in_crisis.pdf-(ciddd.ca)>

Ontario Independent Police Review Director, *Police Interactions with Persons in Crisis,* (March 2017) at 4, online (pdf): <www.oiprd.on.ca/wp-content/uploads/Police-Interactions-with-People-in-Crisis-and-Use-of-Force-Systemic-Review-Report- March-2017-Small-pdf>; in reference to fatal encounters between police and persons in crisis, the OIPRD notes, "We cannot ignore the fact that, in many of these cases, the deceased was Black or a person of colour."; Toronto Police Services Board, *Achieving Zero Harm/Zero Death – An Examination of Less-Lethal Force Options, including the Possible Expansion of Conducted Energy Weapons (CEWs)* (Public Consultation) (19 October 2017) online (pdf): <TPSBCEWConsultation_Agenda_DisPaper.pdf>

14 Peel Regional Police Mobile Crisis Rapid Response Teams (MCRRT) pair an officer and a community-based crisis worker from the Canadian Association of Mental Health. See: Peel Regional Police, "Applying the CSWB Framework at Peel Regional Police" (2018), online: *Community Safety and Well-Being* < https://www.peelpolice.ca/en/in-the-community/community-safety-and- well-being.aspx#Mobile-Crisis-Rapid-Response-Teams-MCRRT>

15 Camden County Police use of force policy at section 4.5 -4. See Camden County Police, *Use of Force* (Standard Operative Procedure) (December 2021) online (pdf): < https://camdencountypd.org/wp-content/uploads/2021/12/USE-OF-FORCE- 123121-pdf>

16 The current version of Section 14.5 mandates the submission of a UOF Report when a service member "uses physical force on another person that results in an injury requiring medical attention."[1] See: Ontario Human Rights Commission*, OHRC submission to the Ministry of the Solicitor General on the Equipment and Use of Force Regulation Amendment and implementation of modernized Use of Force Repor*t (October 2022) online: <https://www.ohrc.on.ca/en/ohrc-submission- ministry-solicitor-general-equipment-and-use-force-regulation-amendment-and#_ednref17>

A comprehensive definition should capture all instances where physical force is used, including coercive touches such as wrist or arm locks, striking the subject with the hands or feet. The scope of incidents subject to use of force reporting should be expanded to include the use of handcuffs (mechanical restraints), physical restraints or zip ties.

17 *JKB v Regional Municipality of Peel Police Services Board*, 2020 HRTO 1040 at para 98.

18 Ontario Human Rights Commission, *Policy on eliminating racial profiling in law enforcement* (August 2019) at section 4.2.1, Unwarranted deployment, online (pdf):

<https://www3.ohrc.on.ca/sites/default/files/RACIAL%20PROFILING%20Policy%20FINAL%20for%20Remediation.pdf>

19 The TPS's 2021 eLearning module included training on how previous experiences of racial profiling or racial discrimination in interactions with police may impact a person's perception of an interaction with police and how persons who reasonably believe that they are being racially profiled might react in an angry and verbally aggressive way and how officers can respond in a manner that is consistent with the Listen and Explain with Equity and Dignity (LEED) model. Training in this area should continue to be provided. TPS ELearning Module: Let's Talk How Anti-Black Racism Affects Impartial Policing

20 The following are examples: The Jardine-Douglas, Klibingaitis and Eligon (JKE) inquest examined the deaths of persons in crisis during their encounters with TPS. Office of the Chief Coroner, Jury Recommendations *Inquest into the death of Reyal Jardine- Douglas, Sylvia Klibingaitis, and Michael Eligon* (February, 2014) online

(pdf): <https://www.oha.com/Documents/Jardine- Douglas%20-%20Klibingaitis%20-%20Eligon%20Inquest.pdf>. Jermaine Carby, a Black man who lived with mental illness, was fatally shot by a member of the Peel Regional Police during a traffic stop in Brampton on September 24, 2014. Office of the Chief Coroner, Jury Recommendations *Inquest into the death of Jermaine Carby* (16 May 2016),.Recommendation 38 is in part based on recommendations originally advanced by the coroner's jury in the JKE and Jermaine Carby inquests. Carby has been identified as a possible scenario, as it was one the only matters where the SIU considered the role of race.

21 Training on fair and impartial policing is not recurring, and concepts about racial profiling, racial discrimination, racial bias and anti-Black racism were not effectively integrated into other training programs (see chapter 8 – Gaps in anti-racism policies, training and evaluation).

22 The recommendations from the Loku inquest included "Amend the annual Use of Force recertification to include qualification in areas such as mental health and/or addictions, anti-racism, particularly anti-Black racism, implicit and unconscious bias, fear inoculation, de-escalation and crisis communication." Office of the Chief Coroner, Jury Recommendations *Inquest into the death of Andrew Loku* (June 30, 2017) at recommendation 7.However, the final report found that integration of concepts of anti-Black racism into training programs does not appear to be significant, including in use of force training. See chapter 9– Gaps in TPS and TPSB anti-racism and anti-racial discrimination initiatives.

23 For example, beginning dynamic simulation exercises with the "strategic responses" taught in the TPS's 2021 E-Learning Module "Let's Talk How Anti-Black Racism Affects Impartial Policing", such as the "litmus test", asking oneself "would I be doing the same if the roles were reversed?

24 See Ontario Human Rights Commission, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (August, 2020) online (pdf): <https://www3.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20-%20TPS%20inquiry%20%28updated%20January%202023%29.pdf>

25 See chapter 9 – Gaps in TPS and TPSB anti-racism and anti-racial discrimination initiatives. Before 2017, there is no evidence that training on racial profiling, racial discrimination or anti-Black racism was evaluated. Evaluation of the anti-Black racism component of the 2020 ISTP is insufficient and contrary to the Loku inquest recommendations. There were no incoming or outgoing questions posed to officers, and the knowledge assessment did not include passing or failing grades.

26 The OHRC acknowledges that the TPS attempted to find a third party to conduct a few at this level but did not receive any bids, and that they continue to look into this issue, pursuant to a motion at the October 11, 2022 TPSB meeting, see OHRC interview with Superintendent Frank Barredo (29 November, 2022)

27 See for example: U.S. Department of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* (March 4, 2015) at 91-92 online: https://www.justice.gov/sites/default/files/opa/press- releases/attachments/2015/03/04/ferguson_police_department_report.pdf ; *United States v. The City of Ferguson – Consent Decree,* (April 2016) at 102, 103, 108-115 [*FPD Consent Decree*] online (pdf): Justice Department and City of Ferguson, Missouri, Resolve Lawsuit with Agreement to Reform Ferguson Police Department and Municipal Court to Ensure Constitutional Policing: Ferguson Consent Decree ; *United States of America v. Police Department of Baltimore City, the Mayor and City Council of Baltimore – Consent Decree* (January 2017) at 28-30, 67 and 72-74 [*BPD Consent Decree*] online (pdf): <US v. Baltimore Police – Consent Decree – January 12, 2017 (justice.gov)>

28 The OHRC facilitated dialogue between Dr. Wortley and the experts retained by the TPSB and TPS in recognition of the fact that there are some differences in methodological approaches to analysis although the bottom line conclusions are similar. The OHRC encourages continuation of that dialogue.

29 Standard 32 states: "[Public sector Organizations] must set thresholds for each outcome measure of a program, service, or function, which, if met or exceeded, indicates a notable difference. Thresholds must be: reasonable, set in good faith, and reflect engagements with affected communities; set consistently for all racial groups (different thresholds may not be set for different groups); and focused on adverse impacts or disadvantageous outcomes that would require remedial action." See: Government of Ontario, *Data Standards for the Identification and Monitoring of Systemic Racism* (April 2022), online (pdf): https://files.ontario.ca/solgen_data-standards-en.pdf.

30 Notable disparities should be determined in accordance with Standard 32 of the *Data Standards for the Identification and Monitoring of Systemic Racism* (Setting Thresholds to Identify Notable Differences). See: Government of Ontario, *Data Standards for the Identification and Monitoring of Systemic Racism* (April 2022) online (pdf): https://files.ontario.ca/solgen_data-standards-en.pdf.

31 Ontario Human Rights Commission, *Policy on Eliminating Racial Profiling in Law Enforcement* (2019) online (pdf): https://www3.ohrc.on.ca/sites/default/files/RACIAL%20PROFILING%20Policy%20FINAL%20for%20Remediation.pdf The data collected should also include: the duration of the stop, whether the subject had or was perceived to have a mental health disability and the duration of the search

32 This data collection should also include:

- Number of subjects directly engaged during the interaction
- Whether the SIU was notified of an incident, and if so, when
- Whether the subject was warned that a weapon would be used.
- For incidents where an officer discharged a conducted energy weapon, the number of times each officer discharged it, the mode it was in when discharged (drive stun or full deployment), and where on the subject was hit each time
- For incidents where an officer used a less lethal or intermediate use of force option (e.g., baton, aerosol or soft hand control technique), the number of times the officer used each option
- Reporting on use of force should include the use of mechanical restrains.

(See: recommendations on *reporting use of force* from Chapter 7 of this report)

33 Office of the Chief Coroner, Jury Recommendations *Inquest into the death of Jermaine Carby* (16 May 2016), at recommendation 12.

34 Karen L. Amendola and Robert C. Davis, *Best Practices in Early Intervention System Implementation and Use in Law Enforcement Agencies* (November 2018) at 1, online: National Policing Institute <www.policefoundation.org/publication/best- practices-in-early-intervention-system-implementation-and-use-in-law-enforcement-agencies/?gclid=EAIaIQobChMIj73Fk8qX8QIVlWxvBB1KtAR1EAAYASAAEgLUMfD_BwE>.

35 See: New Orleans Police, *New Orleans Police Department Operations Manual*, Chapter 35.1.9: Insight: Early Intervention System (November 2016) online (pdf): https://nola.gov/getattachment/NOPD/Policies/Chapter-35-1-9-INSIGHT-EFF…- 12-2021.pdf/?lang=en-US%3E

36 As noted in chapter 10 – Gaps in Accountability Mechanisms, the TPS's early warning system does not include race-based data and the TPSB *Policy on race-based data collection, analysis and public reporting* prohibits race-based data from being used in performance management. See Toronto Police Services Board, *Race-Based Data Collection, Analysis and Public Reporting* (September 2019) online: <https://www.tpsb.ca/policies-by-laws/board-policies/177-race-based-data-collection-analysis-and- public-reporting>

37 See: Ontario Human Rights Commission, *Policy on Eliminating Racial Profiling in Law Enforcement* (August 2019) online (pdf): https://www3.ohrc.on.ca/sites/default/files/RACIAL%20PROFILING%20Policy%20FINAL%20for%20Remediation.pdf. For greater detail the system should capture:

All instances where the TPS learns:

i. A decision not to prosecute any charge or ticket was based on concerns of the Crown Attorney about an officer's credibility
ii. A court or tribunal has made a negative credibility determination on an officer
iii. A court or tribunal has concluded that race or a race-related prohibited ground under the *Human Rights Code* was a factor in an officer's conduct.
iv. An officer violated the *Charter* rights of a civilian, regardless of the court's decision to include or exclude the evidence flowing from the *Charter* breach

38 Example: New Orleans Police, *New Orleans Police Department Operations Manual*, Chapter 35.1.9: Insight: Early Intervention System (November 2016) online (pdf): <www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-35-1-9- INSIGHT.pdf/.>

39 New Orleans Police, *New Orleans Police Department Operations Manual*, Chapter 35.1.9: Insight: Early Intervention System (November 2016) at 3, online (pdf): <www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-35-1-9- INSIGHT.pdf/>

40 This applies to successor legislation of the *Police Services Act* e.g. *Comprehensive Ontario Police Services Act* (*COPSA*), 2019, S.O. 2019, c.1-Bill 68, online: <https://www.ontario.ca/laws/statute/s19001>

41 Ontario Human Rights Commission, *Letter to Toronto Police Service and Toronto Police Services Board on its policy and procedure on body-worn cameras* (October 28, 2020) online: <http://www.ohrc.on.ca/en/news_centre/letter-toronto-police- service-and-toronto-police-services-board-its-policy-and-procedure-body-worn>.

42 Avon and Somerset Police and Crime Commissioner, Independent Scrutiny of Police Powers Panel, online, https://www.avonandsomerset-pcc.gov.uk/get-involved/volunteering-opportunities/scrutiny-of-police-powers-panel/; Avon and Somerset Police and Crime Commissioner, Scrutiny of Police Powers Panel (18 May 2018) https://www.avonandsomerset- pcc.gov.uk/wp-content/uploads/2022/02/SPPP-Case-Review-Report-v0.1-EXTERNAL-29-May-18.pdf.

43 See chapter 9 – Accountability when third parties identify racial profiling and racial discrimination by TPS officers.

44 All references to the OIPRD should apply to the Law Enforcement Complaints Agency (LECA), as soon as LECA begins operation.

45. For example, when the SIU raises concerns in its letter to the Chief about an improper detention and the complainant is identified as Black. This applies to the *Police Services Act* and successor legislation, e.g. *Comprehensive Ontario Police Services Act* (*COPSA*), 2019, S.O. 2019, c.1-Bill 68, online: <https://www.ontario.ca/laws/statute/s19001>

46. The OHRC's August 18 2020, deputation to the Toronto Police Services Board, provided the following example of the concerns in this area: "For example, in the civil case of *Elmardy v Toronto Police Services Board*, 2017 ONSC 2074 the Divisional Court concluded that a Black man was the victim of racial discrimination when he was on his way back from prayers in 2011. He was stopped by TPS officers, punched twice in the face, searched, handcuffed and left injured out in the cold. The police officers were also found to have lied when the trial judge questioned them about their behavior. However, it appears there were no serious disciplinary consequences; there were no Notices of Hearing or TPS Disciplinary Tribunal decisions regarding the officers' conduct." See: Ontario Human Rights Commission, *Written deputation to the Toronto Police Services Board re: Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (August 2020) online: <https://www.ohrc.on.ca/en/ohrc-written-deputation-toronto-police-services-board-re- police-reform-toronto-systemic-racism>

47 Section 11 of O. Reg 267/10 under the *Police Services Act R.S.O. 1990, c. P.15*, states that the chief of police shall cause an investigation into any incident where the SIU has been notified. The purpose of the chief's investigation is to review the policies or services provided by the service and the conduct of its police officers. The chief must report his or her findings and any action taken or recommended to the board within 30 days after the SIU director advises the chief of police that they have reported the results of the SIU's investigation to the Attorney General. O. Reg 267/10 was revoked on December 1, 2020. The *Special Investigations Act, 2019 S.O. 2019, c. 1 Sch 5* and O. Reg. 268/10 came into effect on the same day. Section 32 of O. Reg. 268/10 states that the chief of police shall "cause an investigation to be conducted into any incident involving a police officer in the chief's police force that becomes the subject of an investigation by the SIU Director." The purposes of the investigation are the same as under O. Reg. 267/10.

48 The OHRC recommends that assessments be based on re-assessment scores and the number of complaints filed against the officer, and EIS data using benchmarks established by the independent monitor in consultation with the TPS external collection expert.

49 Assessment based on the percentage of crisis calls de-escalated by the officer.

50 This may require an amendment to the TPS's Incident Response (Use of Force/De-escalation) Procedure (15–01). See: Toronto Police Services, *Chapter 15: Incident Response (Use of Force/De-Escalation) & Equipment* (June 2022) online (pdf):

<https://www.tps.ca/media/filer_public/3c/44/3c44bb8e-f95b-4d98-b02d-9ac61650e5f3/15-01_incident_response_--_use_of_forcede-escalation_20220627ext.pdf> and Evaluation Reclassifications and Appraisal Procedure (14–02).

51 Ontario Human Rights Commission*, Submission of the OHRC to the Ministry of Community Safety and Correctional Services on the Strategy for a Safer Ontario* (2016) at recommendation 19, online: <www.ohrc.on.ca/en/strategy-safer-ontario-

%E2%80%93-ohrc-submission-mcscs>. Recommendation 19 states: "Adopt and implement all measures necessary to ensure that police services and police services boards reflect *Code*-protected groups and the community they serve. Report on activities, outcomes (census data), and progress publicly."; The recommendation was developed by the coroner's jury in the inquest into the death of Jermaine Carby. A complete list of recommendations can be viewed online: Jury Recommendations, *Inquest into the death of Jermaine Carby* (16 May 2016).

52 For example, PRP's Ethical Reporting Hotline (featured in the document below) could fruitfully inform revised recommendations under the ambit of duty to intervene. In TPSB meeting from June 22, 2022 it was noted that EIHR is currently in the process of developing a process for reporting of workplace harassment and discrimination. See: Toronto Police Services Board, "Public Meeting Minutes", *Workplace Well-Being, Harassment and Discrimination Review: Appendix C: Survey and Focus Group Questions* (June 22, 2022) online (pdf) at 720: <https://tpsb.ca/jdownloads- categories?task=download.send&id=747&catid=62&m=0> at 720

53 This applies to the *Police Services Act R.S.O. 1990, c. P.15* and successor legislation, e.g. *Comprehensive Ontario Police Services Act* (*COPSA*), 2019, S.O. 2019, c.1-Bill 68, online: <https://www.ontario.ca/laws/statute/s19001>

54 Jeff Asher and Ben Horwitz, "How do the Police Actually Spend their Time?" *The New York Times* (19 June 2020) online: www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html. "A handful of cities post data online showing how their police departments spend their time. The share devoted to handling violent crime is very small, about 4 per cent." 55 For example, was an officer deployed to respond; how many officers were deployed, and how long did they remain at the scene?

56 Auditor General, *A Journey of Change: Improving Community Safety and Well-Being Outcomes*, Review of Toronto Police Services – Opportunities to Support More Effective Responses to calls for Service, (Toronto: June 2022) at page 20, online (pdf): <https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=737&catid=65&m=0>

57 Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #2b, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

58 Ontario Human Rights Commission, *Strategy for Safer Ontario – OHRC Submission to MCSCS* (April 2016), online: Strategy for a Safer Ontario — OHRC submission to MCSCS | Ontario Human Rights Commission

59 The OHRC notes that the Chair and the Executive Director of the TPSB sent a letter to the Solicitor General of Ontario which requested a review of the Province's Use of Force Model, in response to the Police Reform Report (recommendation 48). Among other things, the letter requested that "any new provincial model focuses on de-escalation and minimizes use of force, especially with people in crisis." The OHRC's recommendation builds on this request. See: Letter from Toronto Police Services Board Chair to the Solicitor General of Ontario (5 January 2021) *Request for a review of the Province's Use of Force Model*, online: <667-recommendation-48-letter (tpsb.ca) >

60 This recommendations builds upon prior efforts including recommendation 49 from the Police Reform report which states: "Direct the Executive Director, in consultation with the Chief of Police, to review the Board's Use of Force Policy, consult with internal and external experts, and propose to the Board by November 2020, amendments to the Policy that will align it with best practices to reduce death and injuries from the use of force by Service Members and with the Ontario Provincial Use of Force Model. Toronto Police Services Board," Toronto Police Services Board, *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (August 2020), online (pdf): 630-police-reform-in-toronto-august-2020-report (tpsb.ca) Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #3, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism- policing

61 Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #2, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

62 In line with action 16, in Ontario Human Rights Commission, *Submission on TPSB Use of Artificial Intelligence Technologies Policy*, online: https://www.ohrc.on.ca/en/news_centre/submission-tpsb-use-artificial-intelligence-technologies-policy.

63 This applies to the *Police Services Act* and successor legislation, e.g. *Comprehensive Ontario Police Services Act* (*COPSA*), 2019, S.O. 2019, c.1-Bill 68

64 Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #7, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

65 This recommendation builds upon recommendation 43 from the Police Reform Report, which states: *"Direct the Chair to write in support of City Council's requests for changes to the Police Services Act and other applicable legislation or regulations that would expand the instances in which suspension without pay and revocation of a police officer's appointment as a police officer are available and to support amendments that would, at a minimum, implement the relevant elements of the Police Services Act, 2018 that addressed suspension without pay and the relevant elements of the Policing Oversight Act, 2018 that created the ability to revoke a police officer's appointment as a police officer in Ontario. (City Council #20; CABR #17.2)"* This recommendation also seeks respond to community concerns and specify the type officer misconduct that could be the subject to the disciplinary action contemplated by TPSB's letter of September 22, 2020, to the Solicitor General of Ontario, "supporting the City of Toronto's request for legislative amendments concerning suspension without pay and revocation of a police officer's appointment" (see: https://www.tpsb.ca/jdownloads-categories/send/60-policing-reform-deliverables/665-recommendation- 27-letter)

66 Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #4, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

67 Ontario Human Rights Commission, *Framework for change to address systemic racism in policing* (29 July 2021), #5, online: www.ohrc.on.ca/en/framework-change-address-systemic-racism-policing.

68 See Auditor General, *A Journey of Change: Improving Community Safety and Well-Being Outcomes*, Review of Toronto Police Services – Opportunities to Support More Effective Responses to calls for Service, (Toronto: June 2022) at recommendation 2, online (pdf): <https://tpsb.ca/consultations-and-publications/items-of-interest?task=download.send&id=737&catid=65&m=0> "City Council request the City Manager, in consultation with the Toronto Police Services Board, to reiterate the City's

requests for funding commitments from the Government of Canada and the Ontario Government to support permanent housing options and to provide supports to address Toronto's mental health and addictions crises. In doing so, the City should communicate to the other governments that a "whole-of-government" funding approach in these areas will be critical to building the infrastructure needed to support effective alternative response delivery and ensure the best possible outcomes for the people of Toronto."

69 This applies to the *Police Services Act* and successor legislation, e.g., *Comprehensive Ontario Police Services Act* (*COPSA*), 2019, S.O. 2019, c.1-Bill 68.

Appendix 2 - Racial profiling and the Toronto Police Service : Evidence, consequences and policy options

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Introduction

Canada is one of the world's most active immigrant-receiving nations, and has received international praise for its official policies of multiculturalism and racial inclusion. An argument could be made that Canada's reputation for racial tolerance is well deserved – especially when race relations in Canada are compared to the situations in the United States and some parts of Europe. A closer examination of the historical record, however, reveals that racial bias and discrimination have been serious issues within Canadian society – particularly with respect to the operation of criminal justice system. Indeed, a number of scholars have documented that allegations of racial bias with respect to law creation, policing, the criminal courts and corrections have existed in Canada since before confederation (see for example Perry 2011; Walker 2010; Henry and Tator 2005; Chan and Mirchandi 2001; Mosher 1998). For at least the past 60 years, racial bias with respect to police stop, question and search behaviours – and the official documentation of these encounters through the practice of carding or street checks – has emerged as a particularly controversial issue. Canada's Black, Indigenous and Muslim communities have been especially vocal in their complaints about what has come to be known as "racial profiling" or "racially biased policing."

Historically, allegations of racial bias have been denied – often vehemently – by Canada's major police services and police associations (see Tanovich 2006; Tator and Henry 2006; Wortley and Owusu-Bempah 2011a). Ultimately, some high-ranking police officials, including former Toronto Police Chief Bill Blair, publicly admitted that racially biased policing may be an isolated problem within some communities or among some officers. However, police leaders have rarely discussed the consequences that systemic, racially biased police practices have had on racialized communities. Furthermore, until recently, few police services committed to the long-term study of this phenomenon (see James 2005).

This may be changing. For example, in December 2018, following allegations of anti-Black racism in law enforcement, former TPS Chief Mark Saunders acknowledged that anti-Black racism is a "reality" and that public criticism has been "more than fair" (CBC News 2018). Similarly, in August 2020, TPS Interim Chief Jim Ramer recognized racial bias as an issue and stated that one of his top priorities would be to identify and eliminate systemic anti-Black racism in the Toronto Police Service (Goodfield 2020). Finally, the Toronto Police Services Board recently adopted a policy that will enable the collection of race-based data on police-civilian encounters. As stated by then-Chief Saunders, "At the end of the day, when we get this right, what we'll be able to do is identify and monitor potential systemic racism" (Doucette 2019).

The purpose of this report is to review empirical research on anti-Black racial profiling involving the Toronto Police Service. The Toronto Police Service has been at the heart

of the Canadian racial profiling debate (Commission on Systemic Racism in the Ontario Criminal Justice System 1994). The report begins by reviewing various definitional issues related to the concept – including the concept of "carding" as described by Justice Michael Tulloch in his recent report (Tulloch 2019). The discussion of definitional issues is followed by a theoretical discussion of the possible causes of racially biased policing. This section will describe the various explanations that have been used to account for the existence of racial profiling in police stop and search practices including explicit (conscious) and implicit (unconscious) bias, racial stereotyping, actuarial/ statistical discrimination and institutional/ systemic practices. It will be argued that the research literature strongly suggests that racially biased policing can exist in the absence of individualized, overt racism or racial malice. One does not have to prove that individual police officers are explicitly or overtly racist to prove that racial profiling exists.

The following section of the report will explore research – conducted over the past 25 years – that has attempted to document the existence of racial profiling involving the Toronto Police Service and the extent that biased policing practices impact Toronto's racialized communities. The report explores the various research methodologies that have been used to document racial profiling in Toronto, including qualitative interviews, general population surveys and official police-generated data (including data on carding or street checks). This section highlights research evidence that demonstrates that racial profiling has existed – and continues to exist – in Toronto and that TPS stop, question and search practices (SQS) have had a hugely disproportionate impact on Toronto's Black community.[1]

The report then turns to a discussion of the possible benefits of police "street checks"

and police "stop, question and search" (SQS) practices. I first review police arguments that street checks, SQS practices and other forms of proactive street policing are valuable law enforcement tools that help reduce crime. This section will demonstrate that the empirical evidence supporting this thesis is highly contested. Overall, while there is research to suggest that police stop, question and search practices can identify offenders and reduce crime in some contexts, evidence also suggests that these crime reduction effects

are quite small, inconsistent, short-term and limited to specific neighbourhoods or communities. In general, the bulk of the research suggests that SQS practices are a highly inefficient police tactic.

This following section of the report reviews research that has documented the impact of racially disproportionate policing – including street checks – on racialized individuals and communities. These consequences include: 1) mental health problems; 2) lack of trust or faith in the police and broader criminal justice system; 3) racial disparities within the criminal justice system; and 4) blocked educational and employment opportunities. This section of the report will also discuss the issue of data retention. It will be maintained that the retention of carding or street check data may continue to have an adverse impact on the individuals included in police databases. Furthermore, since Black citizens are greatly over-represented within the street check data, the retention of data will likely have a disproportionate impact on members of the Black community. The report concludes that the documented consequences of these street check practices significantly outweigh the potential benefits.

The last section of the report provides a brief discussion of policy implications. It will be maintained that a variety of strategies – including improved screening of police recruits, the recruitment and retention of racialized officers, anti-bias training, improved regulations and guidelines for police stops and improved supervision and monitoring of front-line officers – are required to reduce racial disparities in police stop, question and search practices and reduce the negative impact that biased policing has on racialized communities. It will also be argued that the improved collection of race-based data is required to evaluate the impact of anti-bias initiatives. It will be argued that improved data collection and dissemination will also increase transparency, improve police accountability, and help improve public confidence in the police and broader justice system.

Definitional issues

Over the past three decades, the term *racial profiling* has become part of the popular lexicon. The term has appeared frequently in everything from academic manuscripts, government reports and news coverage to popular music, movies and television. The term racial profiling has also been used to describe various phenomena including the behaviour of customs and immigration officers, judges, lawyers, private security personnel, teachers, medical professionals, public servants, and members of the general public.

The Ontario Human Rights Commission (OHRC) defines racial profiling as: "*Any act or omission related to actual or claimed reasons of safety, security or public protection by an organization or individual in a position of authority, that results in greater scrutiny, lesser scrutiny or other negative treatment based on race, colour, ethnic origin, ancestry, religion, place of origin or related stereotypes*" (OHRC 2019: 15). The OHRC's revised definition of racial profiling builds and expands on its earlier 2003 definition. The new definition can be broken down into the following core elements (OHRC 2019: 15-16):

- **Act or omission:** adds a reference to "omission" to encompass situations where authority figures fail to exercise due diligence based on racial stereotypes about certain categories of complainants or victims

- **Actual or claimed reasons:** adds reference to "claimed reasons" to acknowledge that authority figures may not always act based on objective concerns about safety, security, and public protection

- **Safety, security and public protection:** recognizes that racial profiling is uniquely focused on actions associated with safety, security and public protection, whether in law enforcement or other contexts including education, transportation, health care, employment and border security

- **By an organization or individual:** refers to both organizations and individuals to recognize that racial profiling may be systemic or individual

- **In a position of authority:** recognizes that racial profiling is particularly associated with the actions of authority figures

- **Results in greater scrutiny, lesser scrutiny or other negative treatment:** recognizes that racial profiling may manifest itself through greater scrutiny, lesser scrutiny (of victimization), or other negative treatment that is not exclusively related to scrutiny

- **Based on race, colour, ethnic origin, ancestry, religion, place of origin or related stereotypes:** captures action based on either race-related *Code* grounds or related stereotypes to recognize that findings of racial profiling can be made in the absence of overt stereotyping.

While acknowledging the utility of the broad OHRC definition, it is important to note that, in

the research literature, the term racial profiling is most often used in reference to police stop, question and search activities (see Rice and White 2010). Many scholars make a conceptual distinction between *racial profiling* and other forms of *racially biased policing*. *Racially biased policing* is a general term that refers to possible racial discrimination with respect to a wide variety of discretionary police behaviours that include stop and search practices, but also include arrest decisions, charging practices, decisions related to pre-trial detention, sentencing recommendations and use of force. Racial profiling, at least for the purposes of this report, focuses specifically on police surveillance and street interrogation practices.

Racial profiling can be said to exist when the members of a certain racial or ethnic group become subject to greater levels of law enforcement surveillance than others. Racial profiling, therefore, refers to racial disparities with respect to police stop and search activities (sometimes referred to street checks or carding), increased police patrols in racialized neighbourhoods and undercover activities or sting operations that selectively target particular racial or ethnic groups. Furthermore, racial profiling exists when racial differences or disparities in police surveillance activities cannot be explained by racial differences in criminal activity, traffic violations, citizen calls for service or other legally relevant factors (see Wortley and Tanner 2005; Wortley and Tanner 2003). This somewhat narrow definition is highly consistent with definitions provided by American scholars. For example, Ramirez and Hoopes define racial profiling as "the inappropriate use of race, ethnicity or national origin rather than behaviour or individualized suspicion to focus on an individual for additional investigation" (Ramirez and Hoopes 2003: 1196). Similarly, Warren and Tomanskovic-Devey (2009: 344) state that racial profiling "is a term used to describe the practice of targeting or stopping an individual based primarily on race or ethnicity, rather than on individualized suspicion or probable cause."

As highlighted by Paulhamus and her colleagues (2010), the academic literature has also drawn a distinction between what has been called "hard racial profiling" (cases in which the police stop civilians solely because of their racial background) and "soft racial profiling" (the use of race or ethnicity as one of several factors in the decision to stop a civilian). Proponents of "soft profiling" definitions argue that racially biased policing exists if race *contributes* to police decisions to stop, question and search individuals. For example, data may reveal that the police are most likely to stop and search male civilians, late at night, within poor, high-crime communities. However, if Black males traversing these same communities, during the same time of day, are significantly more likely to be stopped than White males, this would constitute evidence of racial profiling.

Profiling could be said to exist because, in addition to gender, time of day and type of community, race still impacts police decision-making. By contrast, advocates of "hard profiling" definitions would likely argue that racial bias does not exist in this scenario because race was only one of several factors – including gender, community crime level and time of day – that influenced officer decisions to stop and detain individuals. They would likely argue that this data reflects a pattern of "criminal" rather than "racial" profiling (Satzewich and Shaffir 2009).

Some proponents of the "hard profiling" position have argued that racial bias cannot be said to exist if there is a legal or legitimate reason for stopping the civilians in question. I disagree with this argument. Consider, for example, the following hypothetical situation. Suppose that a police officer was assigned to patrol a particular stretch of highway. Also assume that this officer never stops drivers unless they are exceeding the speed limit. In other words, all of his stops are clearly "legitimate." However, also assume that this officer stops eight out of every 10 racialized speeders he encounters while on patrol (80%), but only stops one out of every five White speeders (20%). In other words, this officer is four times more likely to stop racialized drivers than White drivers who are exceeding the speed limit. In my opinion, this police officer could still be guilty of racial bias, even though all his stops are legally justifiable.

A similar example might be applied to illegal drug use. Assume that an officer stops and searches every racialized civilian he witnesses smoking marijuana in public. Also assume that this same officer decides to ignore most of the White civilians he sees engaged in the same drug using activity. Although it could be argued that the officer has a legally legitimate reason for stopping and searching racialized drug users, the fact that he refrains from stopping and searching White drug users is evidence of racial profiling.

In sum, although the term racial profiling has been used in a wide variety of criminological and sociological contexts, this report focuses exclusively on possible racial biases with respect to police street checks or stop, question and search (SQS) activities. To determine whether systemic racial profiling exists or not, researchers much first establish that some racial or ethnic groups are more likely to be stopped, questioned and/or searched by the police than others. If large racial disparities do not exist, it is highly unlikely that racial profiling is a problem. The next task is to explore the possible reasons behind any observed racial differences in exposure to involuntary police contact. In other words, can racial differences in the exposure to police stop and search activities be explained by other legally relevant factors? The report returns to this question – with a focus on the Toronto Police Service – after discussing the potential causes or reasons behind racial profiling.

A note on Justice Tulloch's definition of "carding"

Public discussions concerning racial profiling in Ontario have been complicated by a variety of competing definitions. For example, in his 2018 report, the Honourable Michael Tulloch draws a strong distinction between "street checks" and what he refers to as "carding." Justice Tulloch defines police carding as: "Situations in which a police officer randomly asks an individual to provide identifying information when there is no objectively suspicious activity, the individual is not suspected of any offence and there is no reason to believe that the individual has any information on any offence. That information is then recorded and stored in a police intelligence database" (Tulloch 2018: xi). In a later section of the report, Justice Tulloch makes a distinction between "legitimate" street checks and carding:

Many of the issues surrounding carding and street checks stem from a misunderstanding of the terms themselves. A street check is where information is obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation. This is a very broad category of police information gathering, and much of it is legitimate intelligence gathering of potentially useful information. Carding, as referred to in this report, is a small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime, nor is there any reason to believe that the individual has information about any crime. This information is then entered into

a police data-base (Tulloch 2018: 4).

Justice Tulloch argues that street checks often reflect legitimate police intelligence gathering activity. By contrast, due to their randomness, carding practices are an illegitimate practice that should be eliminated.[2]

In my opinion, the definitions of both "street checks" and "carding" provided by Justice Tulloch are incomplete when it comes to studying the phenomena of racial profiling. First of all, by its very definition, racial profiling is not random or arbitrary. Racial profiling is caused by racial bias (see discussion below) and thus is strongly associated with the race of civilians – or the racial composition of neighbourhoods – subject to police activity. Furthermore, long before Ontario's new street check regulation and Justice Tulloch's report, the *Charter of Rights and Freedoms* prohibits arbitrary police detentions. Thus, Justice Tulloch's call to eliminate "carding" is nothing new.

Another weakness with Justice Tulloch's definition of "carding" is that it does not acknowledge the concept of the pre-text stop – an important concept within the racial profiling literature. Pre-text stops involve officers using minor offences (i.e., traffic violations, jaywalking, by-law violations, etc.) as a justification, excuse, or pretext to investigate more serious criminal activity (e.g., illegal drugs, illegal firearms, etc.). American research suggests that Black civilians are much more likely to be subject to pretext stops than people from other racial backgrounds (see Rushin and Edwards 2021; Gizzi 2011; Harris 2002; Harris 1997). Similar research and monitoring is required in Toronto and other Canadian jurisdictions (see discussion below).

A problem that could arise with the use of Justice Tulloch's definition of "carding"

 is that it seems to appear to imply that racial profiling cannot exist if officers have a "legitimate" or "legally justifiable" reason for stopping or detaining an individual.

I disagree. As discussed above, racial profiling still exists if officers pay more attention to law violations committed by Black and other racialized civilians than law violations committed by White civilians. As a result, the focus of the analysis provided in this report is on racial disparities with respect to police stop, question and search (SQS) activities. It is not limited to police activities that Justice Tulloch would explicitly identify as "carding" or "street checks."[3]

Furthermore, a focus on police SQS activities better captures the concerns of Black and other racialized communities. For example, previous research indicates that when it comes to addressing issues related to racial profiling, the police and the community have very

different conceptions of street checks. While the police view street checks as a specific intelligence tool, racialized communities view street checks more literally – as being stopped, questioned or "checked" by the police on the street (see Wortley 219).

The causes of racial profiling

What might be the possible cause or source of racial profiling or racially biased policing? Although researchers have spent a great deal of time and effort trying to both define and measure this phenomena, less attention has been given to developing an integrated theory that would help explain the existence of racial profiling by the police. Consistent with the work of Tomaskovic-Devey, Mason and Zinraff (2004), I propose five different theoretical models that might help explain racial profiling: 1) the racial animus model; 2) the statistical discrimination/criminal stereotype model; 3) the implicit bias model; 4) the institutional model; and 5) the police deployment model. It should be stressed that the first three models focus

on the intent and activities of individual police officers, while the final two models focus on organizational mechanisms. It is important to note that the two organizational models do not require any racial bias in officer or organizational intent, although they will produce racially biased police practices and disproportionately impact the members of racialized communities (see Tomaskovic-Devey et al. 2004: 3).

The racial animus model

The racial animus model holds that, within any given society, some people have a conscious dislike or prejudice against the members of other racial groups. To the extent that police services reflect the population that they serve, it is likely that some police officers will also have overtly racist beliefs that may promote or condone the poor treatment of racialized groups. Fortunately, North American research suggests that openly racist beliefs or prejudice have declined significantly over the past 50 years (see Schuman et al 1997; Henry and Tator 2005).[4] Thus, it is likely that overt or explicit racial animus will be limited to a relatively small number

of police officers. Nonetheless, these few racist officers could significantly increase the rate of stop and search for targeted racialized groups and subsequently damage police-community relationships (Tomoskovic-Devey et al. 2004: 9).

According to the racial animus model, if police services can only identify and terminate these few "bad apples," the problem of racial profiling will be eliminated. However, since most modern police services formally proscribe against racist attitudes and behaviour, the identification of overt racism among police officers is not a simple task. Indeed, the actual expression of racist beliefs by police officers, especially as they pertain to the treatment of racialized civilians, is likely to be rarer than the incidence of racial prejudice among police officers (see Tomoskovic-Devey et al. 2009: 9).

It is possible for some police services to have more "bad apples" than others. This might occur if police recruitment procedures do not effectively screen for racial animus or if informal field training processes encourage the expression of racist beliefs. Racial animus is also more likely to flourish within police organizations in which prohibitions against racist behaviour are not properly enforced (see Tomoskovic-Devey et al. 2009).

It should be stressed that the racial animus or "bad apples" explanation for racial profiling is somewhat popular among certain police administrators because it holds that racial profiling is an isolated problem, rather than a systemic issue, involving only a few corrupt police officers (see Tator and Henry 2006). On the other hand, many police officers and police union leaders have come to equate the term "racial profiling" with accusations of overt racism. As a result, when their police service is faced with allegations of racial profiling, many officers believe that they as individuals are being accused of holding overtly racist beliefs and are deliberately trying to harm racialized communities. Not surprisingly, many police officers find such accusations offensive (see Paulhamus et al. 2010; Satzewich and Shaffir 2009; Ioimo et al. 2007).[5]

In sum, although it cannot be totally dismissed, the racial animus model only provides a theoretically limited explanation for racial profiling. Other explanations hold that racial profiling is not rooted in the overt racism of individual police officers. Rather, profiling practices stem from the broader police culture and specific organizational practices.

The statistical discrimination/criminal stereotype model

Racial profiling may also be caused by racial stereotyping with respect to criminal behaviour. In other words, individual police officers may develop beliefs, stereotypes

or profiles about the types of people who are more or less involved in criminal activity. These stereotypes might emerge as a result of socialization into the police subculture, personal job experiences, access to crime statistics or exposure to media depictions and mainstream stereotypes concerning crime and violence. For example, police supervisors and front-line officers may be exposed to crime statistics that show that

a large proportion of gun-related murders and gun possession charges involve Black male offenders. This pattern may be reinforced by racialized media coverage of crime and their own experiences on patrol. Exposure to this information may cause them to believe that it is more rational for police officers to pay special attention – or otherwise suspect – Black males than other civilians. Such conscious stereotyping could directly contribute to racial profiling. Far from an "individual problem," racial stereotyping can become an informal, institutional phenomenon.

The mental construction of the "typical offender" has sometimes been referred to as "criminal profiling" and often involves race or ethnicity as well as other personal characteristics including age, gender, social class and personal appearance (see Satzewich and Shaffir 2009).

Stereotyping may play an important role with respect to proactive policing.[6] Police supervisors, as well as the general public, put pressure on police officers to identify criminal offenders

and subsequently ensure public safety. Demonstrating a proficiency at identifying and apprehending criminals may also be directly related to future promotion and career opportunities. Thus, many officers may feel a need or pressure to categorize people they encounter on the street by their likelihood of being involved in criminal activity. As a result, officers may feel that it would be more efficient or rational, from a crime-fighting perspective, to focus their surveillance activities on young, racialized males than, for example, older White females.

In a classic observational analysis of police patrol practices, Skolnick (1966) observed that the police in the United States tend to perceive young Black males as "symbolic assailants" and thus stop and question them on the street as a means of effective or efficient "crime prevention." Anderson (1990) further articulates this tendency in his ethnographic study of a multi-racial community located in a large American city. In documenting the general police tendency to stop, search and harass young Black citizens as part of their routine patrolling activity, Anderson notes that:

On the streets, colour-coding works to confuse race, age, class, gender, incivility, and criminality, and it expresses itself most concretely in the person of the anonymous Black male. In doing their job, the police often become willing parties to this colour-coding of the public environment... a young Black male is a suspect until he proves he is not (Anderson 1990, pp. 190-191).

While patrolling the streets, the police may engage in the same type of actuarial risk assessment – and subsequent statistical discrimination – used by insurance companies (see Feeley and Simon 1992). For example, it is well known that insurance companies charge much higher premiums for young male drivers than drivers with other demographic characteristics. The justification for these higher rates is that, from a statistical standpoint, younger males are more likely to engage in risky driving behaviours (speeding, driving under the influence, etc.) and are more likely to become involved in serious traffic accidents. The same logic of statistical probability may be employed by the police on the street. According to individual and collective police experiences, young racialized males may be identified as the most likely to be involved in serious crime and violence. Thus, just as all young males must suffer from higher insurance premiums, all young racialized males, regardless of their individual behaviour, pay a higher cost when it comes to police attention.

Even though the majority of young males may have a clean driving record, they must pay higher insurance premiums because of the actions of a relatively few members of their demographic group. Similarly, even though the majority of young racialized males are law-abiding, they must pay a higher criminal justice premium: a criminal justice premium that manifests itself with respect to much greater exposure to police stop, question and search activities. Frank Zimring, an American academic who has championed the use of stop and search tactics, admits that, due to statistical discrimination, Black and other racialized males are going to be disproportionately subjected to police stops. He further concedes that this amounts to "a special tax on minority males" (Bergner 2014). This theme is further elaborated by Tomaskovic-Devey and his colleagues (2004: 12) when they state that:

The use of profiles in law enforcement is thought to increase the efficiency of officers, and, consequently, the police organization as a whole. Unfortunately, criminal profiles are often based on stereotypes of characteristics related to different groups. In turn, group membership becomes a proxy for suspected criminality. An obvious result of such group generalizations in policing is that a widely cast net subjects many noncriminal minorities to police scrutiny while White people – both criminal and noncriminal – escape such surveillance. Criminal status no longer represents an individual characteristic but is shaped by group racial status.

It is important to note that this process of racial stereotyping does not necessarily involve racial animus or malice. Instead, police officer stereotypes about the "probable criminal" may be rooted in a professional desire to be efficient or effective when using limited law enforcement resources. Nonetheless, such racial stereotyping, even when grounded in statistics and conducted in the name of public safety, can have a profoundly negative impact on racialized communities (see discussion below).

The implicit bias model

The discussion, immediately above, referred to processes of *explicit* criminal profiling or criminal stereotyping that may *consciously* impact the actions of individual police officers. However, others have argued that *implicit* cognitive biases can also exist at the subconscious level (see Fridell 2017, White and Fradella 2016; Tomaskovic-Devey et al. 2004 for detailed discussions about the psychology behind the development of implicit cognitive biases). The basic argument is that people, in order to deal with an excess of information, learn to categorize. Categorization provides cognitive efficiency because it enables people to organize information and make decisions more quickly.

Research suggests that people tend to categorize themselves and others into groups automatically and unconsciously. Lacking detailed information about specific individuals, people categorize others on the basis of highly visible and easily attributable characteristics such as race, gender and age. In turn, this process of categorization has an almost automatic impact on how we perceive strangers and often directly impacts how be behave towards them. There is also a general tendency to make in-group and out-group distinctions and for people to display in-group favouritism. Out group biases, including negative attributions, may have a subconscious impact on police decision-making. As Tomaskovic-Devey and his colleagues (2004: 15-17) state:

This general tendency to make in-group and out-group distinctions has implications for racial bias in police stops. Because there is a tendency toward automatic display of in-group favouritism on making in-group and out group distinctions, officers may process information about driver threat in the context of both the driver's and officer's racial background. When engaging in proactive policing such as patrolling

a neighbourhood or interstate, officers are attempting to process large amounts of information in short time periods, with little individual information. They observe many people doing many things in dynamic settings. Acting as "cognitive misers," they attempt to process the information in a way that allows them to be efficient in evaluating all that is observed. Placing information in categories is a primary way that this is accomplished. These categories trigger stereotypes that help determine what seems suspicious or out of place. The types of information police routinely focus on are those that tend to be associated with criminality and public safety. Police can be expected to focus in particular on behaviour, language, vehicle qualities, and appearances (i.e., clothing, jewelry) and settings that invoke images of criminality or threats to public safety. When the officer is making discretionary choices about who to pull over and who to cite, this type of cognitive bias may make cars driven by minority drivers seem slightly more dangerous.

The idea that unconscious or implicit racial bias can impact police decision-making has seemingly been embraced by a number of Canadian law enforcement agencies – including the Durham Regional Police Service, the Peel Regional Police Service, the Ottawa Police Service and the Toronto Police Service. These services have all commissioned the delivery of a training program known as "Fair and Impartial Policing" (fipolicing.com). This program, developed by criminologist Lorie Fridell, is designed to increase police officer awareness of their own implicit or unconscious biases and how these biases may impact how they treat or

respond to people from diverse backgrounds. Unfortunately, at the time of writing this report, the research team could not identify a single published article that evaluated implicit bias training in the Canadian context. Thus, it is impossible to determine whether implicit bias training has actually reduced racially biased policing practices among Canadian police services.

Overall, the research literature suggests that both conscious and unconscious stereotyping, at the level of the individual police officer, might contribute to racial differences in police stop and search activities. However, to truly comprehend the phenomenon of racial profiling, organizational as well as individual factors must be considered.

The institutional model

In the sections above, the report discussed how racial profiling may be the result of conscious racial stereotyping – often justified as criminal profiling – or implicit biases that are outside the consciousness of individual police officers. While conscious stereotypes or criminal "profiles" may be widely held within the police subculture and could be transmitted through informal socialization processes within police organizations, implicit biases, on the other hand, result from normal cognitive functioning and are thus common among people from all occupations and social backgrounds. However, we also cannot dismiss the possibility that certain police services actually develop profiling practices that are formally sanctioned by the organization's leadership. In the United States, the use of formal racial profiles dates back to

the late 1970s, when the federal government created drug courier profiles for the purpose of apprehending drug traffickers at American airports. The practice was later extended to highways and became a widespread policy in the early 1990s after the U.S. Drug Enforcement Agency (DEA) offered drug interdiction training to local and state patrol officers.

During this time, race was introduced as both a legitimate and normal characteristic of drug courier profiles, and police departments used these profiles to make stop and search decisions. A highway drug interdiction program, known as Operation Pipeline, trained more than 27,000 officers from 48 states how to use these profiles (Harris 2002; Warren and Tomaskovic-Devey 2009). There is also evidence to suggest that some Canadian police services may have received training from the DEA that is consistent with the principles of Operation Pipeline (see discussion in Tanovich 2006). There is also emerging evidence to suggest that formal, race-based criminal profiles have been extended to assist police in the identification of street gang members as well as drug traffickers (see Zatz and Krecker 2003; Barrows and Huff 2009).

In sum, it is important to note that the source of racial profiling behaviours cannot always be traced to the racialized beliefs, stereotypes or unconscious biases of individual police officers. Nor can it always be linked to racial stereotypes that are promoted within the informal police subculture. Sometimes the source of racially biased stop and search activities lies in the formal policies and training procedures of police organizations themselves. In other words, even officers who do not hold racist beliefs may engage

in racial profiling when they follow the formally sanctioned orders or instructions provided

by their supervisors and trainers. Once again, although the establishment of formal, race-based criminal profiles are often justified on the basis of effective policing and public safety, they also serve to stigmatize entire racialized communities and subject all members of identified groups to differential police treatment.

The police deployment model

Research suggests that police officers are not often deployed evenly across all areas of a community or urban area. For example, neighbourhoods with high rates of violent crime (homicides, shootings, assaults, robberies, gang activity, etc.) will typically receive more police patrols than neighbourhoods with low levels of violent offending. Indeed, modern, data-driven police management practices entail that crime "hot spots," areas with higher than average rates of violent crime, should receive a disproportionate share of police attention. In addition to the uneven deployment of police patrols across neighbourhoods, research also suggests that the style of policing may vary across communities. Several studies have documented, for example, that policing is often more proactive or aggressive in areas with high crime rates. By contrast,policing tends to be more reactive and less aggressive in areas with low crime rates (Tomankovic-Devey et al. 2004; Nobles 2010; Parker et al. 2010).

Research also demonstrates that recent immigrants and certain racialized groups are over-represented in economically disadvantaged, high-crime communities, while White people are over-represented in wealthy, low-crime communities. Thus, by default, racial minorities are more likely to be subjected to more policing – including aggressive stop and search activities – as a function of the where they reside.[7] Critics have argued that the greater police presence in racialized communities, combined with a more aggressive or proactive policing style, represents a form of systemic bias that will ultimately expose racialized civilians to negative police encounters. In other words, according to the police

deployment model, racial profiling is not necessarily the product of racial stereotyping or racial animus. It might, in fact, be partially explained by where the police are deployed and how the police exercise their authority across different communities.[8]

One further note of caution when discussing the alleged "objectivity" of police deployment practices that are based on the statistical analysis of neighbourhood crime data. As discussed later in this report, biased police practices can produce biased police data. For example, biased policing may be at least partially responsible for the high rates of crime associated with curtained neighbourhoods or communities. Biased data, in turn, can be used to justify the biased police practices. The relationship between crime rates and aggressive, proactive police practices may be a form of self-fulfilling prophecy.

Summary

The purpose of this section has been to review possible explanations for racial profiling. Future research is needed to determine which of the above explanations are the most valid, or whether all five theoretical frameworks occur simultaneously and thus account for some proportion of the racial profiling phenomena. Some scholars believe that, since racial animus has declined significantly within society, overt

racism will only explain a small amount of racial profiling behaviour. Similarly, due to political pressures, it is likely that organizational guidelines that directly target certain racial groups are becoming increasingly rare. However, racial stereotyping, cognitive biases and systemically biased police deployment practices likely remain prevalent and thus are still highly relevant to both researchers and policy-makers. It

is also important to note that some of the theoretical models discussed above are more amenable to policy than others. Formal race-based criminal profiles can be eliminated. Police services can screen for racial animus in new recruits, and discipline or terminate sworn officers who display overtly racist attitudes or behaviours. Policing in high-crime neighbourhoods can also be restricted to rapid response to calls for service, rather than proactive policing practices that often subject law-abiding residents to aggressive street interrogations. However, as noted by Tomaskovic-Devey, Mason and Zingraff (2004: 25), implicit biases and individual-level stereotyping may be more difficult to identify and control.

Evidence of racial profiling by the Toronto Police Service

A review of the international literature reveals that five different methodological strategies have been employed by researchers to explore racial disparities in police stop, question and search activities. These five research methodologies include: 1) qualitative methods; 2) survey methods; 3) observational methods; 4) official statistics on police stops; and 5) official data on street checks or carding. In this section of the report, we examine previous research that has attempted to explore the issue of racial profiling in Toronto. A review of the literature reveals that, with respect to the Toronto Police Service, racial profiling has been examined using only three of the five research methodologies described above: qualitative methods, survey research and official statistics on street checks (also referred to as contact cards, field information reports and regulated interactions). We could not identify an observational study of racial profiling conducted in the Toronto region. Furthermore, despite public demand and report recommendations, the TPS has never conducted a study to examine racial disparities with respect to traffic and/or pedestrian stops.[9]

The review of research evidence begins with an examination of qualitative studies before turning to a discussion of survey research conducted prior to the 2017 implementation of Ontario's new street check regulation. After examining official TPS street check data and describing the dramatic decline in documented street checks post-regulation, the report reviews new survey research conducted since 2017. Results from these recent surveys challenge the argument that Ontario's Street Check Regulation has reduced racial profiling and underscore the great need for race-based data collection on TPS stop, question and search activities.

Qualitative research

Much of the early work on racial profiling in the United States and Great Britain consisted of one-on-one interviews or focus groups with racialized youth (Jones-Brown 2000; Brunson 2007). In the Canadian context, James (1998) conducted intensive interviews with over 50 Black youth from six different cities in Ontario – including Toronto. Many of these youths reported that being stopped by the police was a common occurrence for them. There was also an almost universal belief that skin colour, not style of dress, was the primary determinant of attracting police attention. As one of Black male respondent noted: "They drive by. They don't glimpse your clothes, they glimpse your colour. That's the first thing they look at. If they judge the clothes so much why don't they go and stop those White boys that are wearing the same things like us. I think that if you are Black and wearing a suit, they would think that you did something illegal to get the suit" (James 1998: 166).

James concludes that the adversarial nature of these police stops contributes strongly to Black youths' hostility and negative attitudes towards the police (James 1998: 173). Neugebauer's (2000) informal interviews with 63 Black and White Toronto youth produced very similar results. Although the author found that teenagers from all racial backgrounds often complain about being hassled by the police, both White and Black youth agree that Black males are much more likely to be stopped, questioned and searched by the police in Toronto than teens from other racial backgrounds.

During a series of public consultations in Toronto, conducted by the Ontario Government's Review of the Roots of Youth Violence, strikingly similar stories were communicated to the lead investigators. Black and Indigenous youth from Toronto repeatedly told the inquiry that they felt targeted by the police – often through aggressive police stop and search activities – and that this targeting had eroded their trust in the police and the broader criminal justice system (McMurtry and Curling 2008a; McMurtry and Curling 2008b).

In another qualitative study, the Ontario Human Rights Commission (OHRC) gathered detailed testimonials from a non-random sample of over 800 people in Ontario – most of them Black residents of Toronto – who felt that they had been the victim of racial profiling (Ontario Human Rights Commission 2003). The OHRC project was not only successful in providing vivid descriptions of specific racial profiling incidents, but also provided detailed information concerning how these incidents negatively impact both racialized individuals and communities (Williams 2006). The OHRC conducted a second major investigation into racial profiling in 2015. This investigation involved consultations with a non-random sample of over 1,600 individuals and organizations. Once again, the Commission heard that racial profiling is a major problem in Toronto (Ontario Human Rights Commission 2017).

Importantly, after the release of the first two OHRC investigations, the existence of systemic racism within policing has been acknowledged by representatives from both the TPS and TPSB (see Ontario Human Rights Commission 2017; Aguilar 2020; Fox 2020; Goodfield 2020; Toronto Police Services Board 2020; CBC News 2018; Doolittle 2009).

Finally, since 2018, as part of its current inquiry into racially biased policing, the OHRC has conducted a series of interviews and focus groups with members of Toronto's Black communities and members of the TPS. As with its earlier investigations, the OHRC continued to hear complaints about racial profiling and unfair TPS stop and search

practices. Civilian allegations have also been supported by the testimonials of police officers. In sum, the overall narrative that emerges from two decades of qualitative OHRC research is that racial profiling – within the TPS – is still a problem.

The argument that little has changed with respect to racial profiling in Toronto is reinforced by a number of recent, smaller-scale qualitative studies. These studies, all conducted since 2017 and the imposition of Ontario's Street Check Regulation, focus on Black youth from disadvantaged Toronto communities. All of these studies document negative encounters between Black youth and the TPS, including allegations of racially biased stop and search practices. All document how TPS stop and search activities contribute to community distrust of the police, reduce the likelihood that youth will report crime, and increase reliance on self-help strategies designed to ensure personal safety (see Haag 2021; Samuels-Wortley 2021; Samuels-Wortley 2020; Nichols 2018).

Findings from the above government inquiries and academic studies were reinforced

by the Community Assessment of Police Practices (CAPP) research project. During the summer of 2014, the research team, funded by the Toronto Police Services Board, conducted an ambitious community survey that involved interviews with a non-random sample of 404 residents of 31 Division – an area encompassing one of the most racially diverse and socio-economically disadvantaged regions of Toronto. Approximately half the sample self-identified as Black, 12.1% as White and 30.4% as members of another racialized group. The results of the study indicate that respondents had little trust or confidence in the police. Furthermore, regardless of their own racial background, the majority of respondents felt that the Toronto police engaged in racial profiling. Consistent with this belief, Black respondents were much more likely to report that they had been recently stopped, searched and "carded" by the police than youth from other racial backgrounds. Compared to their White counterparts, Black youth were also more likely to report that, during police encounters, they had been intimidated and treated with hostility and disrespect (see Price 2014).

As discussed briefly above, qualitative methodologies have also been used to study police officer perceptions of the racial profiling issue. For example, following a series of newspaper stories on racially biased policing, former Toronto Police Chief Julian Fantino asked several senior Black officers, including Superintendent Keith Forde, to investigate how allegations

of racial profiling were being perceived by Black members of the force. In response to this request, 36 Black officers from the TPS met to discuss the issue of racial profiling in October 2003. A focus group format was utilized. All of the participating TPS officers agreed that racial profiling was a problem and that the criminal stereotyping of Black citizens was widespread within the Toronto Police Service. The majority of respondents also reported that they themselves had been the victim of racial profiling. Three officers, in fact, reported that they had been stopped and questioned by the police on more than one occasion in the same week, and six officers reported that they had been stopped on more than 12 occasions in the same year. In a subsequent presentation of these findings to their fellow officers, the senior Black officers tasked with the investigation began with the statement: "We know that racial profiling exists" (see Tanovich 2006: 35-36).

Similar research on the perceptions and experiences of Black police officers has recently been conducted by Dr. Akwasi Owusu-Bempah (Department of Sociology, University of Toronto). Owusu-Bempah (2015) conducted in-depth interviews with a non-random sample of 50 Black male police officers – many employed by the TPS. He argues that this police sample can provide unique insights into the reality of racism within law enforcement because of the respondents' dual identities and experiences as both Black males within Canadian society and their experiences as police officers.

Almost all the Black male police officers involved in this study reported that they had observed racial profiling and other forms of racially biased policing on the job. Most admitted that they had worked with fellow officers who openly engaged in racial profiling and condoned the practice. Indeed, the majority indicated that they themselves had been subjected to racial profiling on multiple occasions – even after becoming a police officer.

All agreed that such racial bias has had a negative impact on Toronto's Black community, and has produced distrust between the police and Toronto's Black residents. Many of the officers argued that racially biased policing is caused by racial stereotypes that associate the Black population with both criminality and dangerousness (Owusu-Bempah 2015).

Summary

In conclusion, qualitative research, involving both Toronto residents and Toronto police officers, has produced findings that are highly consistent with the argument that the Toronto police engage in racial profiling. The nature of these qualitative results has not changed over the past three decades. Proponents argue that qualitative research methods can help researchers make sense of police stop and search statistics and further understand how police surveillance activities impact the lives of racialized people. As Brunson (2010: 221) notes, although statistics may help us identify racial differences in overall exposure to police surveillance activities, "they have not elicited the kind of information that would allow researchers to acquire deeper understandings of meanings for study participants.

On the other hand, qualitative research methods provide a unique opportunity to examine

and better understand the range of experiences that may influence individuals' attitudes towards the police." Stewart (2007: 124) adds: "A qualitative research approach allows researchers to measure the various sources of negative direct and vicarious police experiences and understand the meaning one attaches to these experiences."

Although qualitative studies tend to provide great detail about police encounters and the "lived experience" of racial minorities, they have often been criticized for being based on small, non-random samples – usually from economically disadvantaged communities. In other words, it is often difficult to generalize the results of qualitative research to the wider population. Furthermore, most qualitative studies focus on the experiences of racialized people in isolation. In other words, they do not directly compare the experiences of racial minorities with the experiences of White people. These facts alone have led to charges that the qualitative research evidence documenting racial profiling is "selective" or "anecdotal" and thus not truly representative of police behaviour (see Wilbanks 1987; Melchers 2006). It should be stressed, however, that police denials of racial profiling are equally "anecdotal" and have thus been largely dismissed by racial minority organizations and anti-racism scholars (see Tator and Henry 2006). In sum, although qualitative research methods have considerable value when it comes to documenting and understanding police-race relations, there is a general consensus among researchers that, when possible, they should be supplemented with more quantitative approaches.

Survey research

Unlike qualitative research strategies, survey methods often explore the opinions and experiences of citizens using large, random samples. Thus, unlike qualitative results, survey findings can be more easily generalized to the entire population in question. With respect to racially biased policing, survey methods have been used to document that racial profiling is viewed as a serious problem by a large proportion of the Canadian population. In a 2007 survey of Toronto residents, for example, respondents were asked the following question: *Racial profiling is said to exist when people are stopped, questioned or searched by the police because of their racial characteristics, not because of their individual behaviour or their actions. In your opinion, is racial profiling a problem in Canada or not?* The results suggest that Black Canadians are much more likely to perceive racial profiling as a major social problem than their Chinese and White counterparts. Indeed, six out of 10 Black respondents (57%) view racial profiling in Canada as a "big problem," compared to only 21% of White and 14% of Chinese respondents.[10]

Respondents were then asked: *Suppose that, in a particular neighbourhood, most of the people arrested for drug trafficking, gun violence and gang activity belong to a particular racial group. In order to fight crime in this area, do you think it would be okay or legitimate for the police to randomly stop and search people who belong to this racial group more than they stop and search people from other racial groups?* According to the responses to this question, four out of 10 White respondents (39%) and a third of Chinese respondents (34%) feel that racial profiling is a legitimate crime-fighting strategy, compared to only 23% of their Black counterparts. These racial differences in opinion are statistically significant (see Wortley and Owusu-Bempah 2011b; Wortley and Owusu-Bempah 2009).

It is important to note that, in addition to measuring public opinion about racial profiling, survey methods can also be used to measure actual experiences with police stop and search activities in Toronto. The ability for surveys to measure race – as well as other variables that may theoretically predict contact with the police – is an important methodological advance that partially addresses the crucial issue of "benchmarking"

(see detailed discussion in Wortley 2019a; Wortley 2019b). In other words, survey methods enable us to estimate whether race has an impact on police stops and searches after statistically controlling for other relevant factors.

To date, there have been six large Canadian surveys that have addressed the racial profiling issue. Five of these studies were conducted in the Toronto region and the sixth involved a national sample that included a large number of Black Toronto residents. All six studies attempted to document whether racial minorities are more likely to be stopped and questioned by the police than White people – after statistically controlling for other factors that might increase or decrease the likelihood of drawing police attention (see reviews in Wortley 2016; Owusu-Bempah and Wortley 2014).

To begin with, a 1994 survey of over 1,200 Black, Chinese and White Toronto residents (at least 400 respondents from each racial group), conducted by York University's Institute for Social Research, found that Black people, particularly Black males, are much more likely to report involuntary police contact than either White or Asian people. For example, almost half (44%) of the Black males in the sample reported that they had been stopped and questioned by the police at least once in the past two years. In fact, one-third (30%) of Black males reported that they had been stopped on two or more occasions. By contrast, only 12% of White males and 7% of Asian males reported multiple police stops.

Multivariate analyses of these data reveal that racial differences in police contact cannot

be explained by racial differences in social class, education or other demographic variables. In fact, two factors that seem to protect White males from police contact – age and social class – do not protect Black males. White people with high incomes and education, for example, are much less likely to be stopped by the police than White people who score low on social class measures. By contrast, Black people with high incomes and education are actually more likely to be stopped than Black people with a lower-class background. Black professionals, in fact, often attributed the attention they receive from the police to their relative affluence. As one Black respondent stated: "If you are Black and you drive something good, the police will pull you over and ask about drugs" (see Wortley and Tanner 2003; Wortley and Kellough 2004).

A second study, conducted in 2000, surveyed approximately 3,400 Toronto high

school students about their recent experiences with the police (Wortley and Tanner 2005; Hayle, Wortley and Tanner 2016). The results of this study further suggest that Black youth are much more likely than people from other racial backgrounds to be subjected to street interrogations. For example, over 50% of the Black students report that they have been stopped and questioned by the police on two or more occasions in the past two years, compared to only 23% of White students, 11% of Asians and 8% of South Asians. Similarly, over 40% of Black students claim that they have been physically searched by the police in the past two years, compared to only 17% of their White and 11% of their Asian counterparts.

However, the data also reveals that students who engage in various forms of crime and deviance are much more likely to receive police attention than students who do not break the law. For example, 81% of the drug dealers in this sample (defined as people who sold drugs on 10 or more occasions in the past year) report that they have been searched by the police, compared to only 16% of students who did not sell drugs. This finding is consistent with the argument that the police focus more on civilians who engage in illegal activity than civilians who do not engage in crime.

The data further reveal that students who spend most of their leisure time in public spaces (e.g., malls, public parks, nightclubs, etc.) are much more likely to be stopped by the police than students who spend their time in private spaces or in the company of their parents. This leads to the million-dollar question: Do Black students in this study receive more police attention because they are more involved in crime and more likely to be involved in leisure activities which take place in public spaces?

While the survey data reveal that White students report much higher rates of both alcohol consumption and illicit drug use, Black students report higher rates of minor property crime, violence and gang membership. Furthermore, both Black and White students report higher rates of participation in public leisure activities than students from all other racial backgrounds. These racial differences, however, do not come close to explaining why Black youth are much more vulnerable to police contact.

Multivariate analysis reveals that after statistically controlling for criminal activity, drug use, gang membership and leisure activities, the relationship between race and TPS stop and search activity becomes even stronger. Why? Further analysis reveals that racial differences in TPS stop and search practices are, in fact, greatest among students with low levels of criminal behaviour. For example, 34% of the Black students who *have not* engaged in any type of criminal activity still report that they have been stopped by the police on two or more occasions in the past two years, compared to only 4% of White students in the same behavioural category. Similarly, 23% of Black students with no deviant behaviour report that they have been searched by the police, compared to only 5% of White students who report no deviance (Wortley and Tanner 2005). Thus, while the first survey, discussed above, reveals that age and social class do not protect Black people from police stops and searches, this study suggests that good behaviour also does not shelter Black civilians from unwanted police attention.

This high school survey was also able to demonstrate that, because they are subject to higher levels of police surveillance, Black youth in Toronto are also more likely to be caught when they break the law than White youth who engage in exactly the same forms of criminal activity. Consider the example of student drug dealers. As discussed earlier, we defined a drug dealer as any respondent who had sold illegal drugs on at least 10 occasions in the past year. Our findings further reveal that 65% of Black drug dealers have been arrested at some time in their life, compared to only 35% of the White drug dealers – a finding that likely reflects the fact that Black students are much more likely to be stopped and searched by the police (Wortley and Tanner 2005; Hayle, Wortley and Tanner 2016).[11]

These findings have also been replicated using a national sample of Canadian youth (12–17 years old). Fitzgerald and Carrington used data from the 2000–2001 National Longitudinal Survey of Children and Youth (sample size=4,164 respondents) to explore whether "high-risk" visible minority youth (Black, Indigenous and Arab respondents) were more likely than White youth or "low-risk" minority youth (South Asians and Asians) to be stopped and questioned by the police. It is important to note that a high proportion of the Black respondents to this national survey were from Toronto.

Consistent with the Toronto high school survey discussed above, Fitzgerald and Carrington (2011) found that Black, Indigenous and Arab youth from Toronto and other regions of Canada were significantly more likely to be stopped and questioned by the police over the past year than White, Asian or South Asian youth. Furthermore, multivariate analyses reveal that the impact of race on police stops remains statistically significant after controlling for other theoretically relevant variables including socio-economic status, family background, parental supervision, leisure activities, neighbourhood safety and individual involvement in both violent and nonviolent crime. In other words, although high-risk racialized youth reported higher levels of criminal involvement than White youth, this did not explain why racialized youth were more likely to be stopped and questioned by the police.

Indeed, consistent with Wortley and Tanner's (2005) findings, the results of Fitzgerald's and Carrington's (2011) work suggests that racial differences in police contact are greatest among youth with low levels of criminal involvement. Once again, Canadian findings suggest that "good behaviour" does not protect Black people and other minorities from unwanted police contact to the same extent that it protects White people. The authors conclude that their findings are consistent with allegations of racial profiling.

A fourth Canadian survey, conducted in 2007, involves interviews with a random sample of 1,500 White, Black and Chinese Torontonians, 18 years of age or older. Over 500 respondents were selected from each of the targeted racial groups (Wortley and Owusu-Bempah 2011b). Respondents were asked how many times they had been stopped and questioned by the police – while driving in a car or walking or standing in a public space – in the past two years. The results suggest that a third of the Black respondents (34%) have been stopped by the police in the past two years, compared to 28% of White respondents and 22% of Chinese respondents.

Racial differences exist for both traffic and pedestrian stops. Black people are especially likely to experience multiple police stops. Indeed, 14% of Black respondents indicate that they have been stopped by the police on three or more occasions in the past two years, compared to only 5% of White and 3% of Chinese respondents. On average, Black respondents experienced 1.6 stops in the past two years, compared to 0.5 stops for White people and 0.3 stops for Chinese respondents.

Multivariate analysis of the 2007 survey data reveals that Black males from Toronto are particularly vulnerable to police stops. One in four Black male respondents (23%) indicate that they were stopped by the police on three or more occasions in the past two years, compared to only 8% of White males and 6% of Chinese males. On average, Black males experienced 3.4 police stops in the past two years, compared to 0.7 stops for White males and 0.5 stops for Chinese males. Although Black females are less likely to be stopped and questioned by the police than Black males, they are significantly more likely to report police stops than White or Chinese females. In fact, Black females (9%) are more likely to report three or more police stops than White (8%) or Chinese males (6%). On average, Black females report 0.7 police stops in the past two years, compared to 0.4 stops for White females and 0.2 stops for Chinese females (Wortley and Owusu-Bempah 2011).

Survey respondents were also asked if they had been physically searched by the police in the past two years. Once again, the data reveal that Black people – particularly Black males – are more vulnerable to police searches than respondents from other racial backgrounds. Overall, 12% of Black male respondents report being searched by the police in the past two years, compared to only 3% of White and Chinese males. Black females are also more likely to report being searched by the police (3%) than White or Chinese females (1%).

The data from this survey of Toronto residents clearly indicate that Black respondents are more likely to be stopped and searched by the police than White or Chinese respondents. However, as discussed above, there are factors, besides race, that may explain Black over-representation in police encounters. For example, Black Torontonians tend to be younger and less affluent than their White and Chinese counterparts. Thus, it may be youthfulness or poverty – not racial bias – that explains why Black people are more likely to be stopped and searched. Similarly, Black people may be more likely to be stopped because they are more likely to reside in high-crime neighbourhoods, often marked by aggressive police patrol strategies. Furthermore, racial differences in behaviour, not race itself, might explain why Black people receive greater police attention. For example, compared to people from other racial backgrounds, Black people may be more vulnerable to police stops because they spend more time driving or hanging out in public spaces. Finally, Black people may be more likely to draw the legitimate attention of the police because they are more likely to be involved in traffic violations or various forms of criminal activity.

In order to address these competing hypotheses, the authors produced a series of logistic regressions predicting police stop and search experiences. In addition to race, these regressions statistically control for a variety of demographic variables including age, gender, education, household income and place of birth. Our analysis also controlled for level of crime within the respondents' neighbourhood, frequency of driving, level of involvement in public leisure activities, alcohol use, marijuana use and criminal history.

The results of the multivariate analyses indicate that, among Toronto residents, Black racial background remains a strong predictor of police stop and search activities after statistically controlling for other theoretically relevant variables. Chinese racial background, on the other hand, is unrelated to the probability of being stopped and searched by the police. The results further suggest that the more stringent the measure of police stops, the stronger the relationship with Black racial background. For example, an examination of the odds ratios indicates that Black people are 1.9 times more likely than White people to experience one or more stops in the past two years, 2.3 times more likely to experience two or more stops and 3.4 times more likely to experience three or more stops. Furthermore, the results suggest that Black people are also 3.3 times more likely than White people to have been searched by the TPS in the past two years (Wortley and Owusu-Bempah 2011b).

All respondents who reported that they had been stopped and questioned by the TPS in the past two years (N=423) were subsequently asked a series of questions about their

most recent police encounter. The results clearly indicate that Black Toronto residents tend to interpret police stops more negatively than their Chinese and White counterparts. To begin with, respondents were asked if they thought their latest police stop was fair or unfair. Almost half of the Black respondents (47%) felt that their last police stop was unfair, compared to only 17% percent of Chinese and 12% of White respondents. Compared to White and Chinese respondents, Black respondents were also less likely to report that the police adequately explained the reason for the stop and were more likely to report that the police treated them in a disrespectful manner.

 Respondents to this survey were also asked the following open-ended question: *The last time you were stopped by the police, why do you think they stopped you?* One out of every four Black respondents (25%) specifically claimed that they were stopped because of their race. By contrast, only two Chinese respondents and two White respondents cited race as the reason that they were stopped. Interestingly, both of these White respondents claimed that they were stopped by the police because they were riding in a car with Black people. With these results in mind, it is not surprising to note that Black respondents were much more likely than Chinese or White respondents to report that they were "very upset" by their last police encounter (Wortley 2011b). These results are remarkably consistent with American research that also suggests that Black people are more likely to feel that they have been treated unfairly or with disrespect during police stops (see Warren 2011).[12]

The issue of involuntary police contact was also explored by a survey conducted as part of the *Black Experience Project* (Environics Institute 2017). This survey, conducted in 2015, explored the opinions and experiences of 1,504 Black residents, 16 years of age or older, from the Greater Toronto Area. My reanalysis of this data, obtained by the OHRC, confirms that negative encounters with the police are very common among the Black residents of the GTA – particularly Black men. For example, 71% of Black male respondents reported that they had been stopped and questioned by the police in a public place, 53% reported that they had been harassed or treated rudely by the police, 23% had been arrested by the police at some time in their life, and 17.5% reported that they had been subject to police use of force (see Figure 1).[13]

Figure 1: Percentage of Black respondents that report negative police encounters, by gender (Black Experience Project Survey)
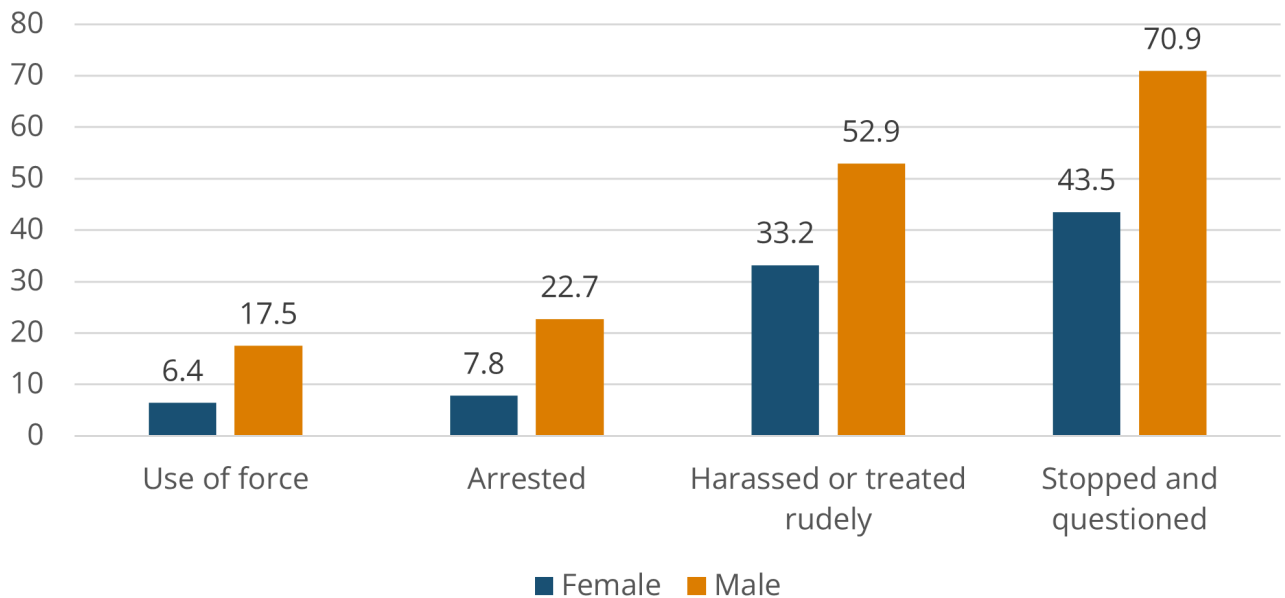
The data further reveal that negative police experiences are slightly more common among Black residents of the City of Toronto than respondents who live in other areas of the GTA (see Figure 2). For example, Black Toronto residents are more likely to report police

use of force, being arrested by the police and being harassed or treated rudely by the police. However, other GTA residents are slightly more likely to report that they have been stopped and questioned by the police in public. Unfortunately, the data do not allow for an examination of where police stops took place. It is quite possible, therefore, that some respondents who live outside of Toronto were actually stopped by the Toronto Police when travelling through the city for work or leisure. All regional differences are statistically significant at the p >.05 level.

Figure 2: Percentage of Black respondents that report negative police encounters, by region (Black Experience Project Survey)

	Use of force	Arrested	Harassed or treated rudely	Stopped and questioned
Other GTA	8.3	11.5	36.7	56.1
City of Toronto	12.4	14.7	44	50.2

■ Other GTA   ■ City of Toronto
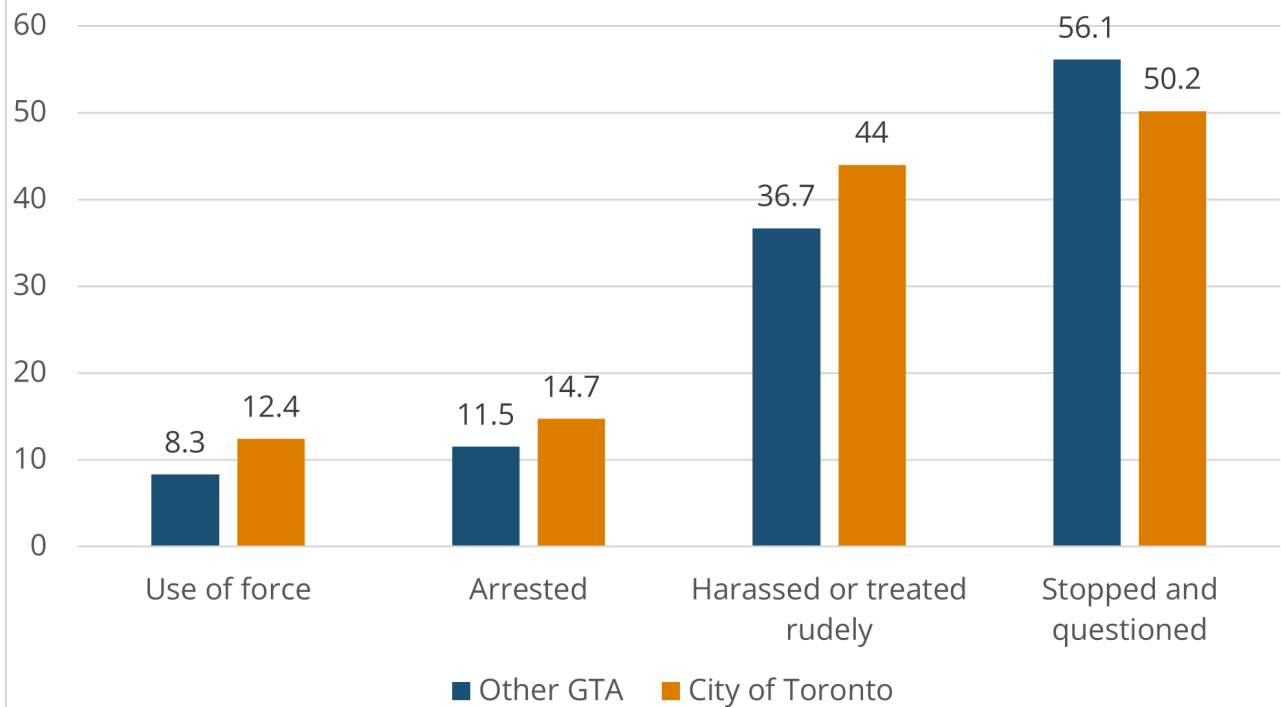
In the past, critics have argued that it is poverty or lower-class position, not racism, that exposes Black people to negative police encounters. However, consistent with previous studies, the results of the *Black Experience Project* reveal that higher social-class position does not protect Black people from involuntary police contact (see Figures 3 and 4) For example, Black people with an undergraduate university degree are more likely to report being stopped and questioned by the police (56.4%) than people with a high school degree or less (45.2%). Similarly, respondents who earn $100,000 or more per year are more likely to report being stopped and questioned by the police (60.3%) than respondents who earn less than $20,000 per year (46.7%). These differences are statistically significant. These findings further strengthen the argument that race alone draws police attention, not social class or residence in a poor neighbourhood.[14]

Figure 3: Percentage of Black respondents that report negative police encounters, by level of education (Black Experience Project Survey)
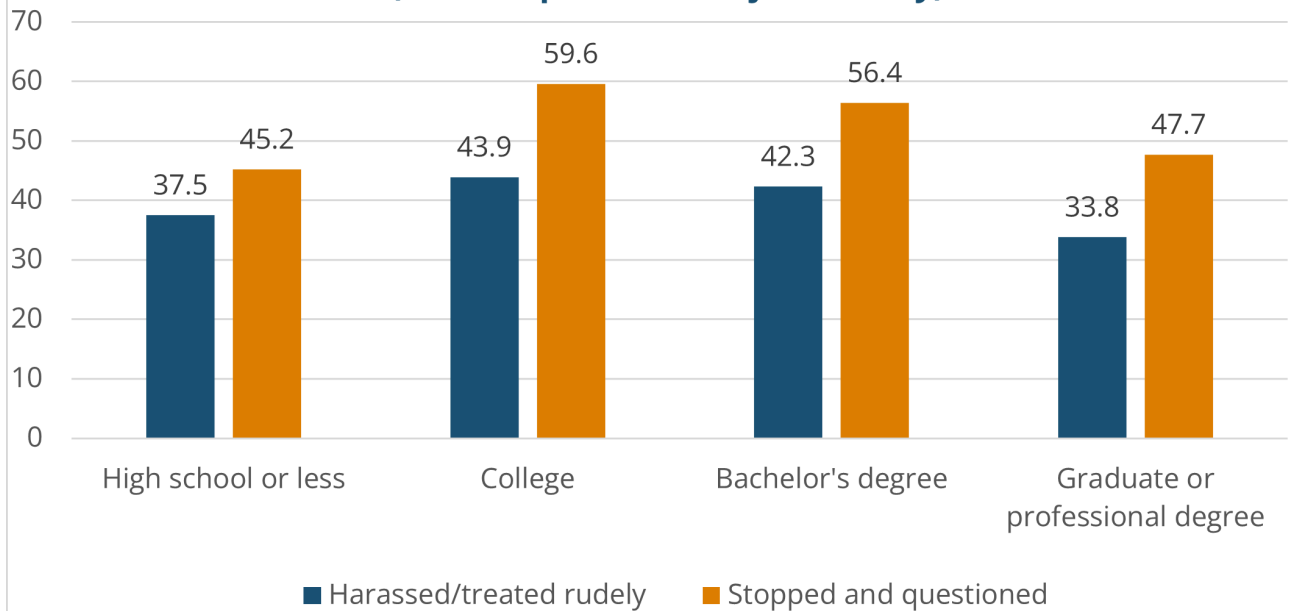
Figure 4: Percentage of Black respondents that report negative police encounters, by personal income (Black Experience Project Survey)

Summary

With respect to investigating racial profiling, survey research has three distinct advantages over qualitative data. First of all, since surveys are based on large, random samples, research results can be more easily generalized to the total population. Secondly, surveys permit direct comparisons between people who report that they have been stopped and searched by the police and people who have not been stopped. Thus, we are able to determine if people who are frequently stopped and searched by the police are different – with respect to race or other theoretically relevant factors – than people with little or no contact. Finally, in addition to documenting specific experiences with the police, surveys can also be used to investigate the psychological impact that perceived racial profiling incidents have on targeted populations.

Survey research, however, is not without its limitations. Potential weaknesses with survey methods include problems with sampling error, questionnaire construction, respondent recall, respondent honesty and sample exclusion (see Lichenberg 2007; Lundman 2003). However, comparing the results of surveys with the results of other qualitative and quantitative research methods can serve as a validity check and ultimately increase confidence in the findings. It is thus important to note that the results of the above Toronto-area surveys are remarkably similar to the results produced by qualitative studies (see discussion above) and studies that examine official statistics from the Toronto Police Service. We turn to an analysis of official TPS "street check" data in the next section.

Official police statistics: street checks

A fourth strategy for measuring police stop and search activities involves the use of formal police records to document discretionary police-civilian interactions. In the United States and Great Britain, official police-reported data is arguably the most common source of information on police stop and search practices (Miller 2010; Paulhamus et al. 2010; Tillyer et al 2010; Batton and Kadleck 2004). This is not surprising given that police statistics are rather quick and inexpensive compared to large-scale surveys, systematic social observation, interviews, ethnography, and other qualitative methods. Often, data is already available, and new data collection strategies require minimal changes to current stop and search recording practices. Large police datasets can also be generated in a relatively short period of time at minimal cost to the organization. Official data collection also has the advantage of maintaining high levels of police discretion in policing practice, but at the same time goes towards addressing and allaying community concerns about racial profiling (Data Collection Resource Centre 2011). Finally, one advantage of police-recorded stop data includes legal and contextual variables that may be missing from citizen reports of police stops, such as reason for the stop, official disposition of the stop, the police perception of citizen race, as well as the exact date, time and location of the stop.

Unfortunately, unlike England and many regions of the United States, police services in Canada are not required to record the race or ethnicity of the civilians they stop and/or search. Furthermore, with the exception of special studies conducted in both Kingston (Marshall 2017; Wortley and Owusu-Bempah 2016) and Ottawa (Foster, Jacobs and Siu 2016), no Canadian police service voluntarily collects and disseminates data on traffic or pedestrian stops. Thus, in this country, official police statistics typically cannot be used to investigate racial differences in police stop and search activities.

Importantly, another source of official Canadian data can be used to assess racial differences in levels of police contact. This data involves a range of police activities including street checks, contact cards, community engagement incidents, field information reports and regulated interactions. Although the exact terminology used to identify such police-civilian engagements varies from police service to police service, they tend to refer

to the same phenomenon. For the purposes of this report, the term "street checks" will be used to refer to practices that include contact cards (carding), field information reports, community engagement incidents and regulated interactions. It should be stressed that street checks *are not* completed after every police stop. Before the 2017 implementation of Ontario Regulation 58/16 (see discussion below), street checks were only filled out when individual police officers want to record the details of an encounter they have had with a particular civilian. It should be noted that, in the vast majority of cases, street checks are not filled out during police encounters that end in arrest or criminal charges. In such cases, a record of arrest and/or criminal incident report is used to capture relevant information. Street checks, on the other hand, are typically filled out in cases where criminal charges are not laid, but the police officer still wants to record – for police intelligence purposes – personal information about the civilian stopped and details about the encounter. Over the past decade, numerous police services have released street check data to the public. This data has consistently demonstrated that, across time and police jurisdictions, Black people are highly over-represented in police street check statistics. However, a great deal of the public attention and debate has focused on street checks conducted by the Toronto Police Service (TSP).

The Toronto case study

Although street checks have been collected, in one form or another, by police in Ontario since at least 1970, information about what they contained was never released to the public. However, following a hotly contested freedom of information request that ultimately took them to the Ontario Court of Appeal, the *Toronto Star* newspaper eventually obtained information on over 1.7 million civilian street checks that had been filled out by the Toronto police officers between 2003 and 2008. Subsequent data requests from the *Star* captured information from more than two million additional street checks completed between 2008 and November 2013. Overall, the data indicate that the Toronto Police Service completed close to three million street checks over the decade spanning 2003 to 2013 – approximately 300,000 per year (see Rankin 2010a; Rankin 2010b; Rankin and Winsa 2012; Rankin and Winsa 2014).

The contact cards or street checks obtained by the *Star* contain various pieces of information including the civilian's name and home address, the reason for the stop and the location and time of the encounter. These cards also include basic demographic information including age, gender and skin colour. The cards often include information on the civilian's associates (i.e., who they were with at the time of the stop) and specific observations or comments about the encounter deemed relevant by the officer(s) involved. Police argue that this information helps them keep track of who is present on the streets at certain times and locations and that this information may help them identify potential crime suspects, victims and potential witnesses.

Critics argue that these contact cards provide insight into police surveillance practices and largely reflect the types of neighbourhoods and civilians that come under enhanced police scrutiny. A possible methodological benefit of the contact card data received by the *Star* is that at the time of the first data request, the police did not know that contact card information was going to be available for public scrutiny. In other words, the actions of the police documented by the Toronto contact card data were not impacted by their knowledge of an ongoing research project (see Barnes 2010 for the potential impact of what has become known as the Hawthorne Effect).

The following results stem from a re-analysis of TPS street check data, compiled from 2008 to 2013, conducted for the purposes of this report. The results are highly consistent with findings previously published in the *Toronto Star* – with several refinements. To begin with, only those cases in which the race of the carded civilian was recorded by the officer are included in the current analysis (sample size=1,846,930).[15]

The data indicate that 25% of all street checks completed by the TPS between 2008 and November 2013 involved individuals described as "Black." Census projections, however, suggest that only 8.08% of Toronto's population at the time self-identified as Black.[16] In other words, Black people are 3.09 times more likely to appear in street check statistics than their representation in the Toronto population would predict (see Table 1).

Further analysis reveals that during this period, the street check rate for Black people was 2,123.0 per 1,000. In other words, the TPS conducted 2,123.0 street checks for every 1,000 Black people in the Toronto population – or approximately 2.1 stops for every Black person in the city. By contrast, the street check rate for White people was only 653.7 per 1,000 – significantly less than one stop for each White person in the general population. Overall, the Black street check rate is 3.25 times greater than the White rate. This indicates that, between 2008 and 2013, Black people in Toronto were 3.25 times more likely to experience a TPS street check than White people (see Table 1).[17]

Table 1: Toronto Police Service street check data, by race, 2008 to 2013

Racial groups	Population size	% of population	Total number of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,454,030	54.09	950,457	51.46	0.95	653.7
Black	217,360	8.08	461,468	25.00	3.09	2,123.0
Brown	337,512	12.55	308,809	16.72	1.33	914.9
Other racialized	679,840	25.28	126,196	6.83	0.27	185.6

Total	2,668,742	100.00	1,846,930	100.00	1.00	692.1

A number of critics, however, have argued that many street checks completed by the Toronto Police likely involve civilians who do not actually live in the city. If this is true, it would make the street check rates and racial disparities, presented in Table 1, unstable. Fortunately, the 2008–2013 street check dataset indicates whether individuals reside in the City of Toronto or some other jurisdiction. Further analysis reveals that during this time period, 708,706 carding incidents – or approximately 38% of all carding cases – involved individuals who were not residents of Toronto. Table 2, therefore, recalculates street check statistics using only those cases that involve Toronto residents and include the race of the civilian carded (sample size=1,138,224). The results suggest that although the removal of non-residents reduces the overall carding or street check rate, the magnitude of the racial disparities is not diminished. In fact, racial disparities actually become more pronounced. Limiting the analysis to Toronto residents, the street check rate drops from 2,123.0 to 1,362.0 for Black people and from 653.7 to 392.6 for White people. However, the data also indicate that between 2008 and 2013, Black residents of Toronto were 3.22 times more likely to be carded than their representation in the general population would predict. Furthermore, the data indicate that Black Toronto residents are 3.47 times more likely to be subjected to a TPS street check than their White counterparts.

Table 2: Toronto Police Service street check data, by race, Toronto residents only, 2008 to 2013

Racial groups	Population size	% of Population	Total number of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,454,030	54.09	570,897	50.16	0.93	392.6
Black	217,360	8.08	296,051	26.01	3.22	1,362.0
Brown	337,512	12.55	195,787	17.20	1.37	580.1
Other racialized	679,840	25.28	75,489	6.63	0.26	111.0
Total	2,668,742	100.00	1,138,224	100.00	1.00	426.5

Another potential weakness with typical Census benchmarking is that it does not account for civilians who have been subject to multiple street checks. Indeed, individuals who are street checked on multiple occasions can drive up the street check rates for an entire racial group. Table 3, therefore, recalculates odds ratios and street check rates by controlling for individuals who have been stopped on multiple occasions. The data provided in Table 3 counts every civilian once and thus eliminates the influence of outliers.

The data indicate that between 2008 and 2013, 629,556 unique Toronto residents were responsible for 1,138,224 distinct street checks (about 1.8 street checks per individual in the dataset). On average, Black individuals in the street check dataset were involved in 2.23 street checks during this time frame, compared to 1.89 for Brown individuals, 1.70 for White individuals and 1.29 for individuals from other racialized groups.

When individuals are counted only once, racial disparities noticeably decrease. For example, the percentage of Black people in the street check data drops from 26.01% to 21.06% and the odds ratio drops from 3.22 to 2.61. However, even when counting unique individuals once, Black people are still 2.6 times more likely to appear in the TPS street check dataset than their presence in the general population would predict. Similarly, even when counting individuals once, the Black street check rate (610.1 per 1,000) remains 2.65 times higher than the White rate (230.3 per 1,000). In other words, the data suggest that between 2008 and 2013, the TPS conducted street checks on approximately 61.0% of Toronto's Black resident population, compared to only 23.0% percent of Toronto's White resident population.

Table 3: Toronto Police Service street check data, 2008 to 2013, by race Toronto residents only – unique individuals counted once

Racial group	Population count	% of population	Number of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,454,030	54.09	334,811	53.18	0.98	230.3
Black	217,360	8.08	132,621	21.06	2.61	610.1
Brown	337,512	12.55	103,365	16.42	1.31	306.3
Other racialized	679,840	25.28	58,759	9.33	0.37	86.4
Total	**2,668,742**	**100.0**	**629,556**	**100.0**	**1.00**	**235.9**

Community residents have long argued that young Black males are particularly vulnerable to street checks and other police surveillance activities. This claim is also supported by previous survey research (see discussion above). Table 4 provides an additional examination of this hypothesis by examining racial differences in Toronto police carding practices, between 2008 and 2013, for young male residents of Toronto. It should be stressed that all street checks captured in this table involve confirmed Toronto residents – not individuals who reside outside the city limits.

The first thing to highlight is that young males, regardless of their racial background, tend to be significantly over-represented in carding incidents. For example, although 15–24-year-old males represent only 6.3% of Toronto's population, they account for 30.0% of all carding incidents involving Toronto residents. Overall, young males in this age group were 4.8 times more likely to be carded than their proportion in the general population. However, the data also reveal that young Black males were particularly vulnerable to street checks during this period. Although census estimates indicate that Black males, 15–24 years of age, represent only 0.5% of Toronto's population, they accounted for 10.3% all street checks conducted by the Toronto Police Service between 2008 and 2013. In other words, young Black males in this age category were 20.6 times more likely to be carded than their representation in the general population would predict. By contrast, young White males,

in the same age category, are only 3.3 times more likely to be carded than their representation in Toronto's population.

The data further indicate that the carding or street check rate for young Black males (8,709.7 per 1,000) is 4.3 times higher than the city average for males in this age group (2,044.8 per 1,000) and 6.2 times greater than the carding rate for young White males (1,415.6 per 1,000). To put these findings into further context, the data suggest that,

between 2008 and 2013, the TPS conducted approximately 8.7 stops for every young Black male resident of the city, compared to only 1.4 stops for every White male resident in the same age category. These racial differences cannot be easily dismissed.

Table 4: Toronto Police Service carding data, 2008 to 2013, carding incidents involving young male residents of Toronto (15–24 years of age)

Racial groups	# of male Toronto residents (15–24 years of age)	% of Toronto population that is male (15–24 years of age)	# of street checks involving male Toronto residents (15–24 years of age)	% of all street checks involving male Toronto residents (15–24 years of age)	Odds ratio	Street check rate (per 1,000)
White	90,333	3.4	127,877	11.2	3.3	1,415.6
Black	13,503	0.5	117,607	10.3	20.6	8,709.7
Brown	20,968	0.8	77,188	6.8	8.5	3,681.2
Other racialized	42,234	1.6	18,884	1.7	1.1	447.1
Total	**167,035**	**6.3**	**341,556**	**30.0**	**4.8**	**2,044.8**

Further analysis of the TPS carding data indicate that Black people were issued a disproportionate number of contact cards in all Toronto neighbourhoods – regardless of the local crime rate or racial composition. Indeed, the findings indicate that although Black people were over-represented in contact cards collected in high-crime neighbourhoods, they were even more highly over-represented in contact cards collected in low-crime, predominantly White neighbourhoods (Meng 2017; Rankin 2010a; Rankin 2010b; Rankin and Winsa 2012). This finding seemingly contradicts the argument that Black people are only stopped more than White people because they are more likely to live in or spend time in high crime communities. In fact, the data reveal that Black residents of Toronto are more likely than people from other racial groups to be carded both within the patrol zones that they live in and when they travel outside of their immediate neighbourhood.

Additional analysis of the TPS contact card dataset indicates that many police street checks were conducted for reasons of "general investigation." In other words, these contacts were not the result of a specific traffic violation, criminal investigation or suspect description. For example, in 2008, the TPS filled out 289,413 contact cards: 158,685 of these contacts (55%) were conducted for reasons of "general investigation."[18] Consistent with the overall findings, 24% of these "general investigation" stops involved Black people (a rate that is three times higher than the representation of Black people in the general Toronto population). By contrast, less than 1% of all recorded stops were conducted for reasons of suspected bail non-compliance, suspected street gang activity, suspected gun-related activity, a suspected robbery or a suspected break-and-enter incident (Rankin 2010b). An argument could be made, therefore, that these findings are highly consistent with racial profiling allegations – that skin colour makes Black people more vulnerable to general police investigations that do not involve an articulable cause or individualized suspicion. At the very least, they serve to highlight the great need for further research and monitoring.[19]

2014 Toronto Street check data

According to new TPS street check data obtained by the OHRC, the number of street checks conducted by the Toronto Police Service declined dramatically from 403,462 in 2012 to only 24,364 in 2014. This dramatic decline likely resulted from increased public concern about racially biased policing and community allegations of racial profiling. This decline also corresponds with the release of the TPS's *PACER* report (PACER 2014). This report recommended that the performance of front-line officers should no longer be evaluated with respect to the number of street checks completed during each shift. Finally, in 2012, the Toronto Police Services Board created a Street Check Sub-Committee (SCSC). The SCSC eventually directed the TPS to introduce an interim street check receipt process, effective July 1t, 2013. The implementation of this receipt process, which required TPS officers to provide a receipt to all civilians involved in street check incidents,

likely contributed further to the dramatic decline in street checks between 2012 and 2014. . However, despite the dramatic decline in overall street check numbers, the following analysis reveals that racial disparities persisted into the 2014 period.

Table 5 presents data on street checks, conducted and documented by the Toronto Police Service, in 2014. Population estimates are based on the 2016 Canadian Census. It should be noted that in 2014, the TPS added two racial categories to their street check classification strategy: Indigenous and Asian. However, they continued to use a category denoting "Brown" skin colour. For purposes of this analysis, we have collapsed the following racial categories from the Census into the "Brown" category: South Asian, West Asian/Arab and Latin American.

The data, once again, suggest that Black civilians are grossly over-represented in street checks documented by the Toronto Police Service in 2014. For example, although Black people represent only 8.9% of Toronto's population (as measured by the 2016 Census), they represent 26.5% of all street checks conducted by the TPS in 2014. In other words, Black people are 3.0 times more likely to appear in Toronto police street check data than their presence in the general population would predict. The data also indicate

that Indigenous people are over-represented in Toronto street checks. They are 2.9 times more likely to appear in TPS street check statistics than their presence in the population would predict. All other racial groups are under-represented in 2014 TPS street check data. White people, on the other hand, appear in the street check data at a level consistent with their representation in the general population.

According to the data presented in Table 5, Indigenous and Black people have, by far, the highest street check rates. Indigenous people have the highest rate (27.4 per 1,000), followed closely by Black people (26.9 per 1,000). The street check rates for all other racial groups fall below 10 per 1,000. Thus, in Toronto, the 2014 Indigenous (27.4) and Black (26.9) street check rates are over three times greater than the rate for White civilians (8.6 per 1,000).

According to the 2014 data provided by the TPS, civilian race was not recorded for 1,204 street checks (or 4.9% of the entire sample). This missing data could contribute to the under-estimation of racial disparities. Thus, in Table 6, we eliminate missing cases from the data and recalculate the odds ratios. After excluding the missing cases, the percentage of street checks involving Black civilians jumps from 26.5% to 27.9% and the odds ratio increases from 3.0 to 3.1. In other words, after eliminating missing cases, Black people are 3.1 times more likely to appear in 2014 TPS street check data than their presence in the general population would predict.

Similarly, after excluding missing cases, the percentage of street checks involving Indigenous civilians jumps from 2.6% to 2.7% and the Indigenous odds ratio increases from 2.9 to 3.0. In other words, after eliminating missing cases, Indigenous people are 3.0 times more likely to appear in 2014 Toronto police street check data than their presence in the general population would predict.

A potential weakness of census benchmarking techniques is that they do not account for street checks involving non-residents of the jurisdiction under study. The argument is that visitors to the city may drive up the street check numbers for certain racial groups. Fortunately, the 2014 Toronto street check data can distinguish between residents and non-residents. Table 7 recalculates odds ratios and street check rates after non-residents have been eliminated from the Toronto street check data. Overall, racial disparities increase after removing non-residents from the calculations. For example, the odds ratio for Black civilians rises from 3.1 to 3.2 after non-residents have been eliminated from the sample. In other words,

Black residents of Toronto are 3.2 times more likely to appear in street check data than their presence in the general population would predict. Furthermore, the street check rate for Black Toronto residents (18.6 per 1,000) is 3.3 times higher than the rate for White residents (5.7 per 1,000).

Another potential weakness with census benchmarking is that it does not account for civilians who have been subject to multiple street checks. Indeed, individuals who are street checked on multiple occasions could drive up the street check rates for an entire racial group. Table 8 therefore recalculates odds ratios and street check rates by controlling for individuals who have been stopped on multiple occasions. The data provided in Table 8 counts every civilian once and thus eliminates the influence of outliers.

The data indicate that 12,882 unique Toronto residents produced 15,697 distinct street checks (about 1.20 street checks per individual Toronto resident in the dataset). Almost nine out of 10 individuals (88.2%) appear only once in the 2014 TPS street check data. Only 11.8% were subject to two or more street checks. Within the dataset, Indigenous people averaged 1.39 street checks, followed by Black people (mean=1.26), Asian people (mean=1.24), White people (mean=1.17) and "Brown" people (mean=1.13).

In the 2014 Toronto data, when individual residents are counted only once, racial

disparities remain unchanged. For example, when counting individuals once, Black people

are still 3.1 times more likely to appear in the Toronto street check dataset than their presence in the general population would predict. Similarly, the Black street check rate (14.8 per 1,000) remains 3.1 times higher than the White rate (4.8 per 1,000).

The Toronto 2014 data also describe the reason or justification for the street check

(see Table 9). It should also be noted that the street check reason categories changed dramatically between 2013 and 2014. The data suggest that in 2014, over half of Toronto

police street checks (58.2%) were classified as "investigation." No other details are provided. An additional 11.9% were related to "suspicious activity" and 10.9% were "vehicle-related." Once again, very few street checks explicitly deal with specific criminal investigations. For example, only 1.9% of all 2014 street checks dealt with suspected street gang activity (see Table 10).

Table 10 reveals that racial disparities exist with respect to most types of street checks. Indeed – with the exception of street checks related to biker gangs – Black civilians are significantly over-represented in all street check categories. By contrast, Indigenous people are primarily over-represented in vulnerable persons checks. By contrast, other racial groups are under-represented in each street check category. Interestingly, White civilians are over-represented with respect to street checks related to both biker gangs and vulnerable persons. Although Black civilians represent only 8.9% of the population, they represent 63.1% of street gang-related street checks, 27.2% of street checks related to drugs and 25.86% of "general investigations" (see Table 10).

Table 5: Total street checks, Toronto Police Service, 2014, by racial group, population estimates from 2016 census

Racial group	Population estimate (2016 census)	% of population (2016 census)	# of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,282,750	47.7	11,084	45.5	1.0	8.6
Indigenous	23,065	0.9	631	2.6	2.9	27.4
Asian	548,870	20.4	1,519	6.2	0.3	2.8
Black	239,850	8.9	6,455	26.5	3.0	26.9
Brown	597,130	22.2	3,471	14.2	0.6	5.8
Missing	----	----	1,204	4.9	----	----
Total	2,691,665	100	24,364	100.0	1.0	9.1

"Brown" includes "South Asian," "Latin American," "Arab" and "Other"

Table 6: Total street checks, Toronto Police Service, 2014, by racial group (excludes cases in which race is missing),population estimates from 2016 census

Racial group	Population estimate (2016 census)	% of population (2016 census)	# of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,282,750	47.7	11,084	47.9	1.0	8.6
Indigenous	23,065	0.9	631	2.7	3.0	27.4
Asian	548,870	20.4	1,519	6.6	0.3	2.8
Black	239,850	8.9	6,455	27.9	3.1	26.9
Brown	597,130	22.2	3,471	15.0	0.7	5.8
Total	2,691,665	100	23,160	100.0	1.0	8.6

"Brown" includes "South Asian," "Latin American," "Arab" and "Other"

Table 7: Total street checks, Toronto Police Service, 2014, by racial group, City of Toronto residents only, census population estimates based on 2016 Canadian census

Racial group	Population estimate (2016 census)	% of population (2016 census)	# of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,282,750	47.7	7,373	47.0	1.0	5.7
Indigenous	23,065	0.9	363	2.3	2.6	15.7
Asian	548,870	20.4	1,078	6.9	0.3	2.0
Black	239,850	8.9	4,463	28.4	3.2	18.6
Brown	597,130	22.2	2,420	15.4	0.7	4.1
Total	2,691,665	100	15,697	100.0	1.0	5.8

"Brown" includes "South Asian," "Latin American," "Arab" and "Other"

Table 8: Total street checks, Toronto Police Service, 2014, by racial group (City of Toronto residents only – unique individuals counted once), census population estimates based on 2016 Canadian census

Racial group	Population estimate (2016 census)	% of population (2016 census)	# of street checks	% of street checks	Odds ratio	Street check rate (per 1,000)
White	1,282,750	47.7	6,123	47.5	1.0	4.8
Indigenous	23,065	0.9	303	2.4	2.7	13.1
Asian	548,870	20.4	886	6.9	0.3	1.6
Black	239,850	8.9	3,552	27.6	3.1	14.8
Brown	597,130	22.2	2,018	15.7	0.7	3.4
Total	**2,691,665**	**100**	**12,882**	**100.0**	**1.0**	**4.8**

"Brown" includes "South Asian," "Latin American," "Arab" and "Other"

Table 9: Reasons or justifications for street checks conducted by the Toronto Police Service, 2014

Reason for street check	#	%
Drug-related	2,319	9.5
Biker gang/organized crime	204	0.8
Street gangs/guns	464	1.9
Investigation	14,179	58.2
Suspicious activity	2,893	11.9
Vehicle related	2,620	10.8
Vulnerable persons check	1,685	6.9

	Total	24,364	100.0

Table 10: Percentage of civilians street checked by the Toronto Police Service for specific reasons, by racial background, 2014

Reason for street check	White	Indigenous	Asian	Black	Brown	Missing	Sample size
Drug-related	48.4	1.6	4.3	27.2	13.1	5.5	2,319
Biker Gang/organized crime	66.2	1.5	2.5	5.4	3.9	20.6	204
Street gangs/guns	16.4	0.9	6.5	63.1	6.0	7.1	464
Investigation	45.9	3.1	6.6	25.8	14.3	4.3	14,179
Suspicious activity	45.3	2.3	5.6	25.9	16.6	4.3	2,893
Vehicle related	35.7	0.9	5.6	32.7	17.6	7.5	2,620
Vulnerable persons check	58.9	3.5	8.3	15.4	9.8	4.0	1,685
% of population	**47.7**	**0.9**	**20.4**	**8.9**	**22.2**		-----

"Brown" includes "South Asian," "Latin American," "Arab" and "Other"

Toronto Street checks in the Canadian context

Toronto is certainly not the only Canadian city to observe gross racial disparities in police street check statistics. For example, Charest (2009) examined 163,630 identity or street checks carried out by Montreal police (SPVM) from 2001 to 2007. The data show a marked increase in the number of ID checks of Black Montreal residents over the study period. By 2006–2007, Black residents were four times more likely to be stopped and interrogated by the police than their representation in the population. In fact, 30% of all ID checks conducted by the Montreal police involved Black citizens, even though Black citizens comprised only 7% of Montreal's population [Charest, 2009: 3 (original in French)]. As summarized by Eid et al. 2011: 26:

The Charest report highlighted "certain of the harmful consequences of the fight against street gangs and the repercussions of special squads like Avance and Éclipse on the volume and quality of ID checks of members of ethnic groups." It notes that, between 2001 and 2007, the frequency of ID checks increased significantly in the city of Montréal (60% in Montréal, 125% in Montréal-Nord and 91% in Saint-Michel). In addition, it turns out that these observed increases are mainly attributable to stopping persons of "Black descent."

Similarly, a recent inquiry conducted by the Nova Scotia Human Rights Commission found that within the Halifax region, Black people are grossly over-represented in police street check statistics. Although they represent only 3.7% of the population, Black people were involved in 18.4% of the street checks conducted by the local police between 2006 and 2017. In other words, Black people are five times more likely to

appear in police street checks than their representation in the general Halifax population would predict. Other findings from the Nova Scotia inquiry reveal that:

- Between 2006 and 2017, the average annual street check rate for Black Halifax residents (156 per 1000) was more than six times higher than the street check rate for White residents (25 per 1000)
- While the number of completed street checks varied from year to year, the level of Black over-representation remained constant throughout the study period
- The over-representation in street check statistics is particularly high for Black males. The average annual street check rate for Black males (276 per 1000) was 6.9 times greater than the rate for White males (40 per 1000) and 22 times greater than the rate for White females (23 per 1000)
- Although the Black population of Halifax is younger than the White population, racial disparities cannot be explained by group-related age differences. In fact, Black people are grossly overrepresented in street checks across all age categories
- Racial differences in street checks cannot be explained away by criminal history or unique individuals (outliers) who are subject to multiple street checks
- Residential location does not reduce racial disparities in police street check statistics. Racial disparities exist in all Halifax census tracts. In fact, the street check rate for Black people was higher in low-crime, predominantly White communities than in high-crime communities with a large Black population
- Street checks appear unrelated to crime. Increases and decreases in street check activity are unrelated to changes in community-level crime rates over time (for more details see Wortley 2019).

Importantly, these findings are consistent with the argument that higher rates of police surveillance contribute to the criminalization of Nova Scotia's Black community. Indeed, according to police records, approximately one-third of the Black male residents of Halifax (30.9%) were charged with at least one criminal offence between 2006 and 2017, compared to only 6.8% of White males (Wortley 2019).

Over the past few years, street check data has also been released to the public by a growing number of other Canadian police services. When racial data is included, the results (see OHRC 2016; Legal Aid Ontario 2016; Hoffman et al. 2015) consistently reveal that regardless of municipality, Black and other racialized civilians are much more likely to be subject to a street checks than members of the White majority:

- Between 2011 and 2014, the Ottawa police recorded 23,403 street checks. Results indicate that Black civilians were more than three times more likely

to be subject to a street check than their representation in the general population would predict. Middle Eastern civilians were two times more likely to be subjected to a street checks, while White people were under-represented (Yogaretham 2015)

- Between 2010 and 2015, the Hamilton police conducted over 18,500 street checks. Black people were four times more likely to be subject to a street check than their representation in the general population would predict (CBC 2015)

- In 2014, the London Police conducted 8,400 street checks. Black and Indigenous people were over three times more likely to be entered into the street check dataset than their representation in the London population (O'Brien 2016)

- The Peel Regional Police conducted 159,303 street checks between 2009 and 2014. Analysis of the street check data reveals that Black residents are three times more likely to be entered into the street check dataset than White residents (Grewel 2015).

The Toronto Police Service is clearly not the only urban Canadian police agency that engages in street checks or carding. Furthermore, as in Toronto, data from other Canadian cities suggest that Black residents are particularly vulnerable to this form of proactive police surveillance activity. However, what makes Toronto stand out from other police services is the high rate with which they used this tactic – especially between 2008 and 2013. Table 11 compiles data from various street check data releases, with 2016 Census population projections, to produce street check rates per 1,000 for various Canadian cities.

Due to population growth, the use of 2016 projections produces more conservative street check estimates than using projections for the exact years the street check data were collected. Nonetheless, the data reveal that the average street check rate for Toronto, between 2008 and 2013, was 125.6 per 1,000. This street check rate is far higher than the street check rates recorded by any other Canadian police service. During this period, Toronto's street check rate (125.6 per 1,000) is 4.3 times higher than the rate for Halifax (29.4 per 1,000) – the Canadian jurisdiction with the next highest street check rate. Toronto's rate is also 5.7 times greater than the rate for Calgary (21.9 per 1,000), six times greater than the rates produced by Edmonton and Peel Regional Police services, 20 times higher than the rate for the Ottawa Police Service, and 30 times greater than the rate for the Hamilton Police Service. This data clearly indicates that Toronto residents in general, and Black Toronto residents in particular, have historically been more likely to be exposed to police carding or street check practices than the residents of any other Canadian urban centres.

Table 11: Police street check rates, per 1,000, across various Canadian municipalities

City	Population size	Street check data collection period	# of street checks completed	Average # of street checks completed each year	Average annual street check rate per 1,000
Toronto	2,688,742	2008-2013	2,026,258	337,710	125.6
Calgary	1,230,915	2015	27,000	27,000	21.9
Edmonton	899,447	2009-2014	105,306	17,551	19.5
Peel Region	1,381,739	2009-2014	159,303	26,550	19.2
London	494,069	2014	8,400	8,400	17.0
Halifax	403,390	2006-2017	142,456	11,871	29.4
Montreal	1,753,034	2001-2007	163,630	23,376	13.3
Ottawa	934,243	2011-2014	23,403	5,850	6.3
Hamilton	747,545	2010-2015	18,500	3,083	4.1
Vancouver	603,502	2008-2017	97,281	9,728	16.1

Table 12 provides race-specific odds ratios for selected Ontario police services. As discussed earlier in this report, an odds ratio of greater than 1.00 indicates that the members of a specific racial group are over-represented in a jurisdiction's street check data. An odds ratio of less than 1.00 indicates that a group is under-represented. For the purposes of this report, we consider an odds ratio of 1.50 or higher an indication that a group is significantly over-represented in police street checks. An odds ratio of 1.50 indicates that a group is 50% more likely to appear in the street check data than their presence in the general population would predict. The data reveal that Black people are significantly over-represented in the street check data for eight of the nine police jurisdictions for which data could be obtained. The only exception is the Ontario Provincial Police (OPP). Indeed, for Toronto, Peel, Ottawa, London, Kingston and Hamilton, Black people are three times more likely to appear in the street check data than their presence in the general population would predict. In both York Region and Waterloo Region, Black people are approximately 4.5 times more likely to appear in the street check data than the general population.

Indigenous people are over-represented in the street check data for London, Toronto (2014), Hamilton and the OPP. In other jurisdictions, Indigenous representation in the street check data is equal to their proportion of the general population. The findings indicate that people of Middle-Eastern descent are significantly over-represented in the street check data for the Ottawa, York Region and Peel Region. They are under-represented in all other police jurisdictions. The data further indicate that people of "Latin American" descent are significantly over-represented in the street check data from the Peel Regional Police Service. Interestingly, the data indicate that people of both Asian and South Asian descent are significantly *under-represented* in the street check data for all police services included in the current study (i.e., odds ratios of 0.5 or less). Finally, in most cases, the representation of White people in police street check data approximates their representation in the general population (see Table 12).

Table 13 presents the average annual street check rates, by race, for each police jurisdiction. The data indicate that for all police jurisdictions, the annual Black street check rate is between 3.0 and 4.6 times greater than the White street check rate. The only exception is the OPP. Importantly, the data also point to Toronto exceptionalism – particularly between 2008 and 2013. During this period, the annual Black street check rate for Toronto (352.6 per 1,000) was approximately five times greater than the Black street check rate for any other Ontario jurisdiction. In other words, although Black people were subject to higher street check rates in all Ontario jurisdictions, they were especially vulnerable to street checks in Toronto (especially between 2008 and 2013). It should also be noted that for each racial group, street check rates were much higher in Toronto between 2008 and 2013 than any other jurisdiction. In fact, the annual street check rate for White Torontonians during this period (122.6 per 1,000) is significantly higher than the annual Black street check rates for all other Ontario police services (see Table 13).

Table 12: Street check data from selected Ontario police services, odds ratios by race (odds ratios greater than 1.5 indicate significant over-representation in street check data)

Police service	Date range	Total # of street checks	White	Black	Indigenous	Middle-Eastern	South Asian	Asian	Latin American	"Brown"	Other racialized groups
Ottawa	2006–2016	140,750	0.8	3.2	1.1	2.8	0.2	0.3	1.3	---	---
London	2013–2016	36,775	1.0	3.0	2.3	0.7	0.2	0.2	0.3	---	---
York	2013–2016	19,945	1.1	4.6	1.2	2.0	0.8	0.4	1.2	---	---
Waterloo	2006–2016	43,716	1.0	4.7	1.1	0.7	0.3	0.3	1.1	---	---
Kingston	2006–2016	31,668	1.0	3.1	0.9	0.3	0.4	0.2	1.0	---	---
Peel	2006–2007	29,770	0.9	3.3	0.8	2.0	0.6	0.4	1.8	---	---
Peel	2008–2016	173,725	1.0	3.0	1.0	1.3	0.6	0.4	2.0	---	---
Toronto	2008–2013	1,846,930	1.0	2.9	---	---	---	---	---	0.9	0.3
Toronto	2014	23,160	1.0	3.1	3.0	---	---	0.3	---	0.7	---
Hamilton	2006–2016	12,565	0.9	3.2	2.2	0.7	0.3	0.4	1.0	---	---

Table 13: Average annual street check rates (per 1,000) from selected Ontario police services, by race

Police service	Date range	Total # of street checks	White rate	Black rate	Indigenous rate	Middle-Eastern rate	South Asian rate	Asian rate	Latin American rate	"Brown" rate	Other Racialized rate
Ottawa	2006–2016	140,750	12.3	48.4	16.6	41.4	3.6	4.5	18.1	---	---
London	2013–2016	36,775	24.9	72.3	57.6	16.9	4.0	4.9	6.5	---	---
York	2013–2016	19,945	5.1	20.7	5.5	9.3	3.6	1.9	5.3	---	---
Waterloo	2006–2016	43,716	7.9	36.2	9.3	5.7	2.5	2.2	8.3	---	---
Kingston	2006–2016	31,668	25.2	75.1	22.5	8.0	10.6	4.0	25.7	---	---
Peel	2006–2007	29,770	11.8	42.8	10.6	26.8	7.8	4.7	23.7	---	---
Peel	2008–2016	173,725	12.9	48.2	18.6	24.9	11.1	5.4	33.3	---	---
Toronto	2008–2013	1,846,930	122.6	352.6	---	---	---	---	---	105.7	36.33
Toronto	2014	23,160	8.6	26.9	27.4	---	---	2.8	---	5.8	---
Hamilton	2006–2016	12,565	2.1	7.1	4.8	1.6	0.6	0.8	2.1	---	---

Summary

The above analysis of officially recorded TPS street check data is completely consistent with results derived from both qualitative interviews and general population surveys. All three methodologies consistently reveal that Black people are grossly over-represented with respect to police stop, question and search activities. Furthermore, between 2008 and 2013, Toronto's street check rate was much higher than the recorded street check rates for all other Canadian jurisdictions. This finding indicates that Black Toronto residents, compared to Black people who reside in other Canadian jurisdictions, have been particularly vulnerable to police racial profiling.

The impact of Ontario's Street Check Regulation

On January 1, 2017, the Government of Ontario implemented new regulations designed to govern how the police conduct street checks (Ontario Regulation 58/16). It appears that this regulation has virtually eliminated traditional police street check practices across the province – including street checks conducted by the Toronto Police Service (Tulloch 2019). Figure 5 documents the number of street checks formally documented by the TPS between 2008 and 2019. The annual number of street checks conducted by the TPS rose gradually from 323,041 in 2008 to a high of 403,662 in 2012.

By 2012, street checks had become a public issue and the TPS was facing allegations of racial profiling. After an internal review of street check practices, and the adoption of a new street check policy, the number of street checks documented by the TSP plummeted to 189,536 in 2013 and to 24,364 in 2014 (PACER 2014). Apparently, a moratorium was put on street checks in 2015 and 2016, and no street checks were formally recorded by the TPS during this two-year period. Ontario's street check regulation came into play in 2017. Since that time, the TPS has, according to official statistics, conducted only 28 street checks: 25 in 2017, two in 2018, and only one street check in 2019. Thus, according to official police statistics, street checks are a thing of the past.

The disappearance of street checks from official police statistics leads to a new research question: Has the elimination of street checks solved the problem of police racial profiling? Previous research strongly suggests that community members and police officials often have very different definitions of what constitutes a street check. While community members tend to define street checks as being stopped, questioned and searched by the police, the police traditionally focus on a much narrower range of technical activities associated with the collection of information for intelligence purposes (see Wortley 2019a). It is also clear that formal street checks are far less prevalent than investigative stops conducted by the police. For example, between 2013 and 2014, the Ottawa Police Service conducted over 81,000 traffic stops, compared to only 20,000 street checks (Foster et al. 2016). Thus, although street checks appear to no longer exist, we must further explore whether racial disparities in police stop, question and search activities (SQS) persist. Emerging evidence from three recent studies suggests that despite street check regulations, alarming racial differences still exist with respect to police SQS practices.

Figure 5: Number of street checks conducted by the Toronto Police Service, 2008 to 2019
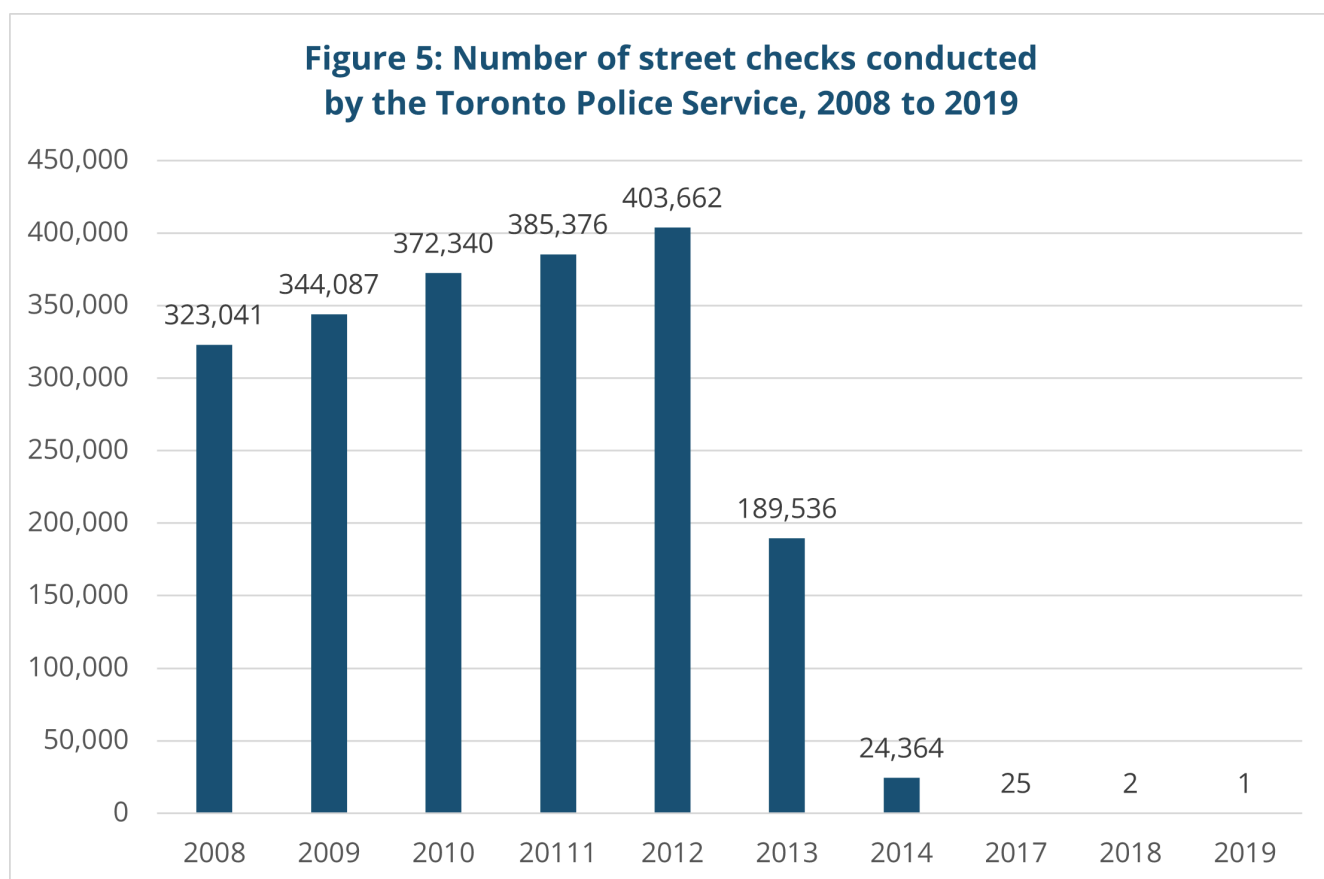
The Toronto Guns and Youth Violence Project involves in-depth interviews with 492 young people, 16–24 years of age, residing in economically disadvantaged, high-crime communities within the City of Toronto. All interviews were conducted in 2018 or 2019, a full year after Ontario's street check regulations had come into effect. Almost three-quarters of the sample (74.2%) self-identified as Black. A third

(32.1%) indicated that they had been arrested at least once in their life. All respondents were asked whether they had been stopped and questioned by the police in the past year. A total of 197 respondents (40.0% of the sample) reported that they had been stopped by the police at least once in the past year, and 19% stated that they had been searched. It should be noted that the 197 individuals, from this small sample, who indicated that they had been stopped by the police in the past year, is 64 times greater than the total number of official street checks (three) recorded by the Toronto Police Service during this same period.

The data from this project also indicated that Black respondents (44.6%) were much more likely to report being stopped by the police in the past year than respondents from other racial backgrounds (28%). Indeed, almost a third of Black respondents (31.9%) indicated that they had been stopped by the police on multiple occasions in the past year, compared to only 16.8% of respondents from other racial backgrounds. Furthermore, 27.9% of Black respondents indicated that they had been physically searched by the police in the past year, compared to only 14.6% of non-Black respondents. These racial differences are statistically significant (see Wortley et al. 2019).

Similar results were produced by a study entitled *Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey* (Fearon and Farrell 2019). This study was conducted by Professor Gervan Fearon (Brock University) and Professor Carlyle Farrell (Ryerson University) on behalf of the Toronto Police Service's PACER Committee and the Toronto Police Services Board (TPSB). Between November and December 2017, a structured questionnaire was administered to a random sample of 1,517 Toronto residents. One out of four respondents (24.4%) self-identified as Black, 23.3% self-identified as White, 11.7% self-identified as South Asian, 8.3% self-identified as East Asian, and 32.3% self-identified as the member of another racial group (Fearon and Farrell 2019: 9). The survey had three major areas of interest: 1) perceptions of the Toronto Police Service; 2) opinions towards and experiences with street checks; and 3) community members' knowledge of Ontario's new street check regulations that came into effect on January 1, 2017.

All respondents were asked the following question about street checks:

Carding or street checks refers to a police officer stopping and asking you a series of questions (e.g. your name, age, height, weight, names of your friends etc.) and recording this information on a contact card. The information is subsequently entered into a database for possible use in future criminal investigations. Have

you ever been carded by Toronto police officers?

The data indicate that 170 respondents – 11.3% of the sample – report being carded, or street checked, by the Toronto Police. However, my reanalysis of the data indicates that street check experiences are not evenly distributed across racial groups. Indeed, 19.1% of Black respondents report that they have been street checked by the TPS, followed by 10.3% of South Asian respondents, 5.5% of White respondents and 4.1% of East Asian respondents. In other words, Black respondents were 3.5 times more likely to report a police street check than their White counterparts. At the bivariate level, this racial difference is statistically significant. Furthermore, a multivariate, logistic regression analysis conducted by the authors reveals that Black racial background remains a strong, statistically significant predictor of police street checks even after taking other theoretically relevant factors into account. Indeed, after controlling for gender, age, education, income and neighbourhood crime rate, Black respondents were still 2.2 times more likely to be subject to a street check than White people (Fearon and Farrell 2019: 66–67).

All respondents who reported being street checked were asked when they had last been carded. Interestingly, 21% indicated that they had been street checked in 2017 – the year that the new street regulations came into play. It is also interesting to note that while this small survey of 1,500 respondents documented 34 street checks in 2017, the Toronto Police Service officially recorded only 25 street checks that year for the entire Toronto population of 2.7 million. This finding strengthens the argument that while official street checks have been effectively eliminated, the police may still be stopping and questioning people in a manner that is consistent with racial profiling. As Fearon and Farrell note:

Also interesting is the result that 21% of respondents reported being carded in calendar year 2017 (the year the new rules took effect) which compares to the 19% of respondents who reported being carded the previous year when the new rules were not yet in force (Table 48). One may, therefore, conclude that the imposition

of these new rules has not diminished the rate at which individuals are being carded in the City of Toronto (Fearon and Farrell 2019: 56).

The final survey to consider is a partial replication of a survey that was originally conducted in 1994 on behalf of the Commission on Systemic Racism in the Ontario Criminal Justice System. The original survey (discussed above), conducted by York University's Institute for Social Research, involved a random sample of over 1,200 Toronto residents who self-identified as either White, Black or Chinese (over 400 respondents from each racial group). This survey, the first of its kind in Canada, asked respondents detailed questions about their experiences with and perceptions of the Canadian criminal justice system. Importantly, the 1994 survey was replicated in 2007, by the Hitachi Survey Research Centre at the University

of Toronto. Both the 1994 and 2007 surveys have resulted in several reports and publications in academic journals (see Commission on

Systemic Racism 1995; Wortley 1996; Wortley et al. 1997; Wortley and Tanner 2003; Wortley and Tanner 2005; Wortley and Owusu-Bempah 2009; Wortley and Owusu- Bempah 2011; Owusu-Bempah and Wortley 2013; Wortley and Owusu-Bempah 2016).

The most recent survey was conducted by Environics Research, on behalf of the Canadian Association of Black Lawyers and Legal Aid Ontario, using an online methodology (see https://cabl.ca/race-and-criminal-injustice-new-report-from-cabl-ryerso…-

and-the-university-of-toronto-confirms-significant-racial-differences-in-perceptions-and-experiences-with-the-ontari/). Environics surveyed 1,450 residents from the Greater Toronto Area (GTA) who were 18 years of age or over. Quotas were set to ensure that the final sample consisted of at least 450 respondents from each of three racial groups: 450 of the respondents identified as Black, 450 as Asian (including people of Chinese, Korean, Japanese backgrounds) and 550 as White/Caucasian. The survey was conducted between May 16 and July 29, 2019 – more than two years after the implementation for the Ontario street check regulations.

Many of the survey questions asked in 2019 were identical to the questions asked in both 1994 and 2007. This allows for a trend analysis, or a comparison of how Black, White and Asian people responded to questions about the police and the criminal courts over the past 25 years (Wortley and Owusu-Bempah 2020).[20]

As with the earlier versions of the survey, all respondents to the 2019 study were asked if they had been stopped and questioned by the police – as a pedestrian or while driving in a vehicle – over the past two years. The results reinforce that Black people are much more vulnerable to police surveillance than people from other racial groups. Once again, these findings are highly consistent with allegations of racial profiling. Overall, 40.4% of Black respondents report being stopped by the police at least once in the past two years, compared to only 24.7% of White and 24.9% of Asian respondents. However, the results further reveal that Black respondents are particularly vulnerable to multiple police stops. One-quarter of Black respondents (26.2%) report that they have been stopped two or more times in the past two years, compared to only 11.8% of Asian and 9.8% of White respondents. These racial differences are highly statistically significant (see Table 14).

Additional analysis reveals that Black males are particularly vulnerable to police stops. Overall, half of all Black males (49.2%) report being stopped by the police at least once in the past two years, compared to only 25.9% of White males and 29.8% of Asian males. Black males are also much more likely to report multiple police stops. A third of Black male respondents (34.2%) report two or more police stops in the past two years, compared to only 15.6% of Asian and 9.1% of White males. As a further illustration, 21 respondents in the sample indicated that they had experienced 10 or more police stops in the past two years. Fifteen of these 21 respondents (71.4%) were Black males, even though Black males represent only 13.3% of the total sample. These racial differences are highly statistically significant (see Table 15).

Although men are much more likely to be stopped by the police than women, racial differences in exposure to police stops also exist among women (see Table 16). In general, Black women experience more police stops than either White or Asian women. For example, 33.8% of Black female respondents report at least one police stop in the past two years, compared to only 23.4% of White and 20.6% of Asian females. These racial differences are statistically significant. It is also important to note that Black females (20.2%) are more likely to report multiple police stops than either White (9.1%) or Asian (15.6%) males.

Importantly, multivariate statistical analysis reveals that Black racial background remains a strong predictor of police stops after controlling for other theoretically relevant variables including respondent age, education, income, immigration status, driving frequency, late-night leisure activities, community crime and disorder, violent victimization, illegal drug use and criminal history. After controlling for other variables, the data indicate that Black people are

1.9 times more likely to report one or more police stops, 2.8 times more likely to report two

or more stops, 7.3 times more likely to report three or more stops, and 9.0 times more likely

to report four or more police stops. Additional analysis reveals that – after other variables have been taken into statistical account – Black people are 6.1 times more likely to be searched by the police during a stop incident (Wortley and Owusu-Bempah 2020).

Table 14: Percentage of respondents who report being stopped and questioned by the police during the past two years (combined traffic and pedestrian stops), by respondent race (2019 CABL Survey)

Number of stops	Black	White	Asian

Not stopped	59.6	75.3	75.1
Stopped once	14.2	14.9	13.1
Stopped two or more times	26.2	9.8	11.8
Sample size	450	550	450

x^2=60.168; df=4; p >.001

Table 15: Percentage of male respondents who report being stopped and questioned by the police in the past two years (combined traffic and pedestrian stops), by respondent race (2019 CABL Survey)

Number of stops	Black	White	Asian
Not stopped	50.8	74.0	70.3
Stopped once	15.0	16.8	14.2
Stopped two or more times	34.2	9.1	15.6
Sample size	193	285	212

x^2=51.723; df=4; p >.001

Table 16: Percentage of female respondents who report being stopped and questioned by the police during the past two years (combined traffic and pedestrian stops), by respondent race (2019 CABL Survey)

Number of stops	Black	White	Asian
Not stopped	66.1	76.6	79.4
Stopped once	13.6	12.8	12.2
Stopped two or more times	20.2	10.6	8.4

Sample size	257	265	238

x^2=18.747; df=4; p >.001

Tables 17 and 18 compare police stops across jurisdictions. The results suggest that racial differences in reported police stops are statistically significant across the GTA. However, racial differences are much more pronounced among City of Toronto respondents than respondents who live elsewhere in the GTA (i.e., Peel, Durham, York and Halton regions). Black Toronto residents appear to be particularly vulnerable to multiple police stops. For example, 32.8% of Black Toronto residents report that they have been stopped by the police on multiple occasions in the past two years, compared to only 18.7% of Black respondents who reside in other areas of the GTA. This finding is completely consistent with official data, discussed above, which demonstrates that the TPS's historical street check rate is much higher than other Canadian police services.

Table 17: Percentage of respondents who report being stopped and questioned by the police during the past two years, by respondent race (Peel, Durham, York and Halton residents) (2019 CABL Survey)

Number of stops	Black	White	Asian
Not stopped	64.6	72.8	69.9
Stopped once	16.7	17.9	16.9
Stopped two or more times	18.7	9.3	13.2
Sample size	209	302	219

x^2=9.610; df=4; p >.048

Table 18: Percentage of respondents who report being stopped and questioned by the police during the past two years, by respondent race (City of Toronto residents only) (2019 CABL Survey)

Number of stops	Black	White	Asian
Not stopped	55.2	78.2	80.1
Stopped once	12.0	11.3	9.5
Stopped two or more times	32.8	10.5	10.4

Sample size		241	248	231

x^2=58.357; df=4; p >.001

As discussed above, the 2019 survey is a replication of similar studies conducted in both 1994 and 2007. Table 19 and Figure 6 reveal the percentage of respondents who report being stopped by the police, during the past two years, for each year the survey has been conducted. Two important findings emerge. First of all, across all surveys, Black respondents report a much higher frequency of involuntary police contact than respondents from other racial groups. Secondly, the frequency of police stop activity increased significantly between 1994 and 2019. For example, in 1994, only 16.8% of Black respondents indicated that they had been stopped by the police on two or more occasions in the past two years. This figure rises to 21.0% in 2007 and 26.2% in 2019. Similarly, in 1994, only 4.7% of Asian respondents indicated that they had been stopped by the police on two or more occasions, compared to 12.5% in 2007 and 11.8% in 2020. By contrast, the stop rate for White people has remained relatively constant. In other words, according to these survey results, racial disparities in police stop activities have become even more pronounced over this 25-year period.

Summary

These findings are particularly important in light of Ontario's new Street Check Regulation (O.Reg. 58/16). Although official statistics suggest that street checks were eliminated after the implementation of these regulations, the results of this 2019 survey, conducted more than two years after the street check regulation was imposed, suggest that Toronto-area police continue to stop and question civilians at a high rate. Furthermore, Black people continue to be stopped and questioned by the police at a rate far higher than people from other racial groups. Thus, although the Ontario Street Check Regulation may have eliminated the formal documentation of street checks, it has not decreased racial disparities in police stop and question activities. Eliminating the street check paper trail has not eliminated all evidence of racial profiling. This finding also supports the argument that the police should be mandated to collect information on all police stops – not just those that result in a formal street check. We will return to this argument in the final section of this report.

Table 19: Percentage of respondents who report being stopped by the police in the past two years, by respondent race and year of survey (2019 CABL Survey)

Number of stops	Black			White			Asian		
	1994	2007	2019	1994	2007	2019	1994	2007	2019
None	71.9	66.1	59.6	81.8	78.8	75.3	85.4	71.9	75.1
One	11.3	12.9	14.2	10.2	13.9	14.9	9.9	15.6	13.1
Two or more	16.8	21.0	26.2	8.0	7.3	9.8	4.7	12.5	11.8

Figure 6: Percentage of respondents who report being stopped by the police on multiple occassions over the past two years, by respondent race and year of survey
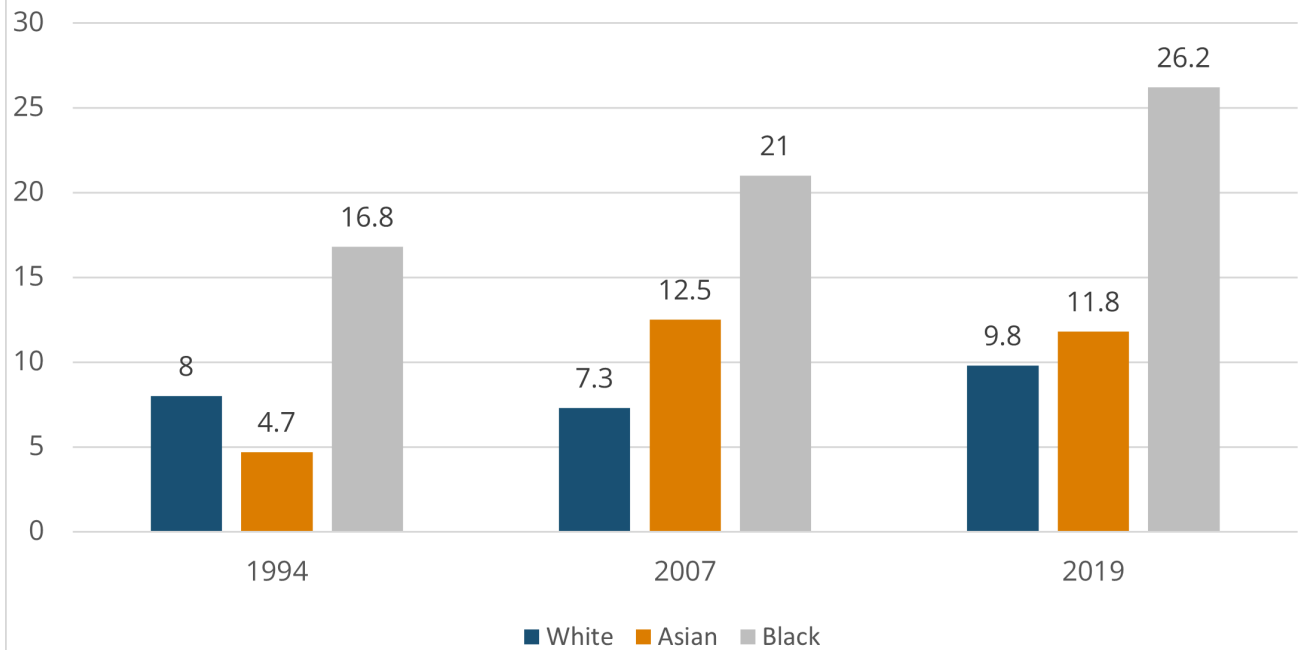
Summary of the research evidence

As documented above, findings from qualitative studies, survey research and an analysis of official TPS street check data all lead to one conclusion: the Black residents of Toronto are subjected to much higher rates of police surveillance than members of the White majority or members of other racial minority groups. In my opinion, this constitutes strong evidence that the Toronto Police Service has engaged in racial profiling. Furthermore, research conducted over the past two years strongly suggests that the TPS *still* engages in racially biased stop, question and search tactics, despite the Ontario government's efforts to regulate street checks. In the next section of the report, we review the argument that street checks and investigative police stops are an effective crime prevention strategy. The subsequent sections explore the various consequences associated with racial profiling. Analysis reveals that the consequences of racially biased police practices far outweigh any potential public safety benefits.[21]

The perceived benefits of police stops

In recent years, North American police officials have come to increasingly defend "stop and frisk" tactics and "street checks" as effective crime prevention strategies (Zimring 2012). They have argued that these tactics are particularly effective with respect to combating street gangs and reducing gun violence. Arguments in favour of stops/carding have included the following points:

- Police stop, question and search (SQS) activities can result in the identification and confiscation of both illegal hand guns and illegal drugs. Removing drugs, guns and offenders from the street will ultimately reduce violent crime and save lives.

- Even when unproductive, police stops are a deterrent. Stopping and searching civilians, especially the residents of high-crime communities, will send the message that the police are taking violence and drug crime seriously. Offenders will come to know that the certainty of police detection and punishment is high, and this will eventually deter them from carrying drugs or guns in public. This deterrent effect will reduce the likelihood of violent, gun-related crime and make communities safer.

- Stop, question and search tactics hold offenders accountable. Stopping civilians and demanding identification will help police officers identify offenders who have warrants out for their arrest. It will also help the police identify offenders who are in violation of parole, probation and other court-imposed conditions (including pre-trial release conditions). By uncovering breach-of-condition violations,

stop and search tactics can increase control over offenders who do not respect community sanctions. This increased control will prevent more serious forms of offending.

- Gang members and drug traffickers often do not reside in the communities that they "terrorize." Stop and frisk practices can help identify trespassers and keep them out of public housing developments. Such practices will reduce both crime and fear of crime in affected communities.

- Stopping and documenting civilians (carding) can improve police intelligence. It can, for example, provide information on who resides in particular neighbourhoods or who frequents particular crime "hotspots." Carding can also help identify criminal "associates" and link offenders to potential witnesses, victims and accomplices. Such intelligence can help the police solve crimes or decide what individuals or groups should be targeted for further investigation.

Unfortunately, such police arguments rarely consider the legality of these stop, question and search tactics. Even if effective – many have argued that these tactics cannot be condoned because they clearly violate basic civil rights (Tanovich 2006). It was this very logic that Judge Shira Scheindlin of the U.S. District Court for the Southern District of New York applied when she ruled that the NYPD's Stop, Question and Frisk (SQF) policy was unconstitutional (Bergner 2014). After all, one could argue that if we eliminated all civil rights, and all rules of procedural justice, we would be in a better position to fight crime. Police would be better able to identify illegal activity and arrest offenders if they could only stop, detain, question and search any person at any time for any reason. They could also fight crime more effectively if they had the power to immediately conduct warrantless searches of homes and vehicles without having to explain or justify their actions. Such tactics, even if highly effective at detecting crime, apprehending criminals and deterring future offending, would violate the general principles of democracy and the rule of law.

Philosophical arguments aside, research evidence on the actual effectiveness of police stop, question and frisk tactics is quite limited. Canadian data is virtually nonexistent. Some American studies, however, do suggest that targeted, broken-windows policing strategies – including hot-spots policing and stop and frisk tactics – are responsible for significant crime declines in cities like New York, New Orleans and Los Angeles (see Land 2015; Braga 2015; Braga 2012; Durlauf and Nagin 2011). Skeptics, however, argue that most studies are inconclusive and have not taken into account other factors that may explain recent crime reductions – including community crime prevention initiatives and anti-violence movements that have emerged within poor, racialized communities. Skeptics also maintain that over the past two decades, violent crime has also declined in many urban centres that do not employ aggressive stop, question and frisk tactics (see Doob and Gartner 2017; White and Fradella 2016; Apel 2015; Meares 2014; Tonry 2011).

Recent analysis of crime data in the United States also reveals that the crime prevention qualities of police stop, question and frisk (SQF) practices are rather limited. For example, Rosenfeld and Fornago (2012) examined the impact of SQF on robbery and burglary rates in New York City between 2003 and 2010. Their multivariate analysis controlled for a number of other factors including, neighbourhood disadvantage and stability, percentage of Black people in the community and overall crime trends. Results suggest that SQF did not impact burglary rates and had only a small and inconsistent impact on robbery rates. The authors conclude that based on the study results, one can't conclude that stop, question and frisk (SQF) has no impact. However:

…if there is an impact it is so localized and dissipates so rapidly that it fails to register in annual precinct crime rates, much less the decade-long city-wide crime reductions that public officials have attributed to the policy. If SQF is effective, but its effects are highly focused and fleeting, policy makers must decide whether expansions in a policy that already produces 700,000 police stops a year are warranted, especially given the ongoing controversy regarding the disproportionate impact of SQF on racial and ethnic minorities and the possibility that it reduces police legitimacy, which may erode its crime-reduction effects over the long term (Rosenfeld and Fornago 2012: 117-118).

In another recent study based in New York City, Weisburd et al. (2015) found that controlling for a variety of other community-level factors, the approximately 700,000 stop, question and search encounters conducted by the NYPD each year contribute to only a small, two per cent reduction in crime. The authors note that attributing even this small crime reduction to SQF is problematic because it is impossible to distinguish the impact of police stops from their mere presence in the community. In other words, the impact of SQF tactics on actual crime rates is likely much smaller than advocates claim. The authors conclude that despite the fact that police stop and frisk tactics may have a small crime reduction effect:

The aggressive use of SQFs could erode citizens' willingness to report crime to, or to cooperate in investigation and intelligence gathering with, the police…The question is whether this approach (SQFs) is the best one for crime prevention at hot spots and whether its benefits are greater than the potential negative impacts on citizen evaluations of police legitimacy (Weisburd et al. 2015: 50).

Interestingly, despite dire warnings, new regulations and the dramatic decline of stop and frisk activities in New City have not resulted in significant increases in violent or property offending. In fact, crime rates have continued to decline to historic lows (see Chaun et al 2015; Wegman 2015; Bostock and Fessenden 2014). For example, in 2003, the NYPD conducted approximately 160,000 stop, question and frisk investigations. There were 597 homicides that year. In 2011, the NYPD conducted 685,000 SQFs and the number of homicides dropped to 515. After being ruled unconstitutional, the number of SQFs dropped to only 47,000 in 2013. However, the number of homicides continued to decline – only 333 murders were recorded that year (Weisburd et al. 2015).

A similar situation seems to be emerging in Toronto. As the result of public pressure and the implementation of a new policy, the number of contact cards completed by the Toronto Police Service dropped by over 75% between 2012 and 2014 (see Rankin and Winsa 2014). However, Toronto's rate of violent crime continued to decline over this two-year period. In 2015, violent crime had dropped to its lowest level since the mid-1960s (see Boyce 2015).

While Canadian data is not available, we also know from American and British research that that police stop, question and search activities rarely uncover direct evidence of criminal activity. Some have likened it to looking for a needle in a haystack. For example, between

2004 and 2012, the NYPD conducted approximately 4,135,000 stop, question and frisk investigations.[22] Only 46,000 of these stops – a mere 1.1% – resulted in the seizure of illegal contraband and only one out of every 1,000 stops (0.01%) resulted in the seizure of an illegal firearm (see Torres 2015). A similar picture emerges in England. As documented

by Bowling and Phillips (2007), the per capita police stop rate in England and Wales is approximately 6.5 times greater for Black people than for White people. However, the hit rate for both Black and White people is almost identical – about one per cent of stops for both groups result in the discovery of illegal activity. The fact that these hit rates do not vary by race might be interpreted as an absence of racial bias. However, the hit rate figures, combined with the per capita stop and search rate, sheds light on another reality: every year, innocent Black people in England and Wales are 6.5 times more likely than innocent White people to endure an unnecessary stop and search encounter with the police. This fact could undermine public confidence in the police – a topic addressed further in the next section.

In Toronto, it has been recently argued that the elimination of street checks has contributed significantly to a rise in violent crime – including shootings and homicides. For example, in 2012, the TPS conducted 403,662 street checks. By contrast, in 2018, the TPS conducted only two street checks (a decline of 403,660 street checks over a six-year period). However, over this same period, the number of homicides committed in Toronto rose from 57 in 2012 to 96 in 2018 – a difference of 39 homicides (a 68% increase). However, even if we accept

the argument that all 39 additional homicides would have been prevented if street checks numbers had remained high, street checks would still emerge as a highly inefficient crime prevention method. Indeed, according to these numbers, it would take 10,350 street checks to prevent one Toronto homicide.

Similarly, according to TPS statistics, the number of shootings in Toronto rose from 213 in 2012 to 424 in 2018 – a difference of 211 shootings (a 99% increase). Even if we buy that all of this increase in shootings would have been prevented by street checks, the data suggest that it would take 1,913 street checks to prevent just one shooting. Thus, when we consider the negative impact that street checks have had on the Black community, the value of street checks as a crime prevention strategy must be questioned.[23]

At the same time, we must not completely handcuff the police. We must remember that racialized communities are sometimes negatively impacted by high levels of violence and, like all people, desire police protection when it is needed. Nonetheless, even advocates of stop, question and search tactics are now arguing that aggressive, arbitrary police stops of all "available" civilians must be dramatically reduced (Zimring 2012). Furthermore, the use of documented police stops to evaluate officer performance is a failed practice. In cities like New York and Toronto, such policies dramatically increased the number of stops being conducted, diminished the usefulness of these encounters, and greatly damaged police-community relations (White and Fradella 2015). A more targeted, community-driven approach is required.

The implementation of focused deterrence strategies is one possible solution. Proponents argue that these strategies can reduce serious violence while simultaneously improving the often strained relationship between the community and the police. To begin with, focused deterrence directly involves community leaders, social service providers and regular citizens in the planning and implementation of violence-prevention initiatives. Partnerships between the police and community improve the transparency of law enforcement activity, and provide local residents with both a voice and a role in crime prevention work. By using various analytical tools – including community stakeholders – to identify individuals, groups and gangs central to local crime problems, these initiatives are highly focused on very high-risk people. In other words, they do not subject law abiding citizens to indiscriminate police surveillance and investigation.

Police also make concerted efforts to communicate with targeted individuals and warn them of the consequences of continued criminal behaviour. They are also made aware of community-based programs and services that will help them exit the criminal lifestyle. Community members tend to appreciate the fairness of offering youthful offenders the opportunity to change their behaviour rather than simply relying on arrest and prosecution.

Finally, focused deterrence focuses on issues of procedural justice and legitimacy. Targeted offenders are treated with dignity and respect. Preliminary evaluation findings suggest that the focused deterrence approach has been successful at lowering crime rates and improving community confidence in police operations (Goff et al. 2015; Corsaro and Engel 2015; Brunson 2015; Land 2015). Such programs could represent the balance between public safety concerns and civil rights that Canada deserves.

The consequences of racial profiling

The social and psychological consequences of racial profiling and police stop, question and search activities have been extensively documented (see reviews in White and Fradella 2016; Doob and Gartner 2017; Glaser 2015; Harris 2002; Hart et al. 2008; Tanovich 2006; Ontario Human Rights Commission 2003; Tator and Henry 2006; Bowling 2011). In sum, people who perceive that they have been the victim of racial profiling often feel humiliated, frightened, angry, depressed, frustrated and helpless.

Previous research further suggests that racial profiling – as with other types of racism – is a quality-of-life issue and that frequent exposure to police stop and search activities can have a negative impact on both physical and mental health (see White and Fradella 2016; Glaser 2015; Paradies et al. 2015; Watts 2014; Freeman 2012; Pieterse et al. 2012). The focus of this section of the report, however, is to clearly document the consequences of racial profiling with respect to the criminal justice system.

First of all, logic dictates that there is a direct relationship between how closely people are monitored by the police and how likely they are to get caught for breaking the law. In other words, if racial minorities are systematically stopped and searched more frequently by the police than White people, they are also more likely to be detected and arrested for illegal activity than White people who *engage in exactly the same criminal behaviour*. Thus, racial

differences in police stop and search activities directly and significantly contribute to the over-representation of certain racial groups – Black and Indigenous Canadians in particular – within the Canadian criminal justice system (Wortley and Owusu-Bempah 2016; Owus-Bempah and Wortley 2014; Wortley and Owusu-Bempah 2011a).

In the United States, numerous academics have demonstrated that racially biased police stop and search practices, implemented as part of the War on Drugs, directly contributed to the dramatic increase in the over-representation of Black and Hispanic people within the American correctional system (Gabbidon and Greene 2005; Walker et al. 2004; Mauer 1999; Cole 1999; Tonry 1995; Mann 1993). Critics further argue that differential law enforcement practices help explain why the majority of people convicted

of drug crimes in the United States are Black and Hispanic, even though the vast majority

of drug users and traffickers are White (Harris 2002; Tonry 1995).

The hypothetical data provided in Table 20 provides a simple illustration of how racial profiling can impact the over-representation of racial minorities in the justice system. Let us assume that a particular community has 2,000 residents aged 18 to 24 years. Let us also assume that 1,000 of these neighbourhood youth are Black and the other 1,000 are White. The rate of carrying illegal drugs for personal use is exactly the same for each racial group (20%). In other words, the community has 200 Black drug users and 200 White drug users. However, due

to informal racial profiling practices by the local police, 50% of the Black youth in the neighbourhood will be stopped and searched by the police during the course of the year, compared to only 10% of the White youth. As a result, 100 of the 200 Black drug users will be detected and charged with drug possession by the police, compared to only 20 of the 200 White drug users. Thus, the profiling of the Black population will ensure that Black youth are more likely to be caught for breaking the law than their White counterparts. This process will ultimately lead to the over-representation of Black youth in the criminal justice system. Furthermore, at the end of the year, the police may review their drug arrest statistics and note that 100 of the 120 drug arrests (83%) that they made in this neighbourhood over the past year involved Black youth, a statistic that will serve to further reinforce racial profiling practices. In other words, racial profiling can become a self-fulfilling prophesy.

Table 20: Hypothetical distribution of youth in a fictional community

Characteristics and outcomes	Black youth	White youth
Number in community	1,000	1,000
Number using illegal drugs	200	200

This, of course, may be an overly simplistic example, but it does demonstrate how racial profiling can potentially contribute to the over-representation of racial minorities in the criminal justice system. Indeed, a recent investigation conducted by the OHRC indicates that Black Toronto residents are grossly over-represented in a wide range of discretionary offenses – including drug possession. The authors argue that this over-representation is directly related to racial profiling and TPS over-surveillance of Black communities

Percentage who use drugs	20%	20%
Number searched by the police in the past year	500	100
Number detected with drugs and charged	100	20
Percentage of all drug users detected by the police	50%t	10%

(Wortley and Jung 2020). It is also likely that racial profiling and biased police surveillance practices directly contribute to the gross over-representation of Black people in TPS use of force incidents. The greater the overall exposure to police contact, the greater the likelihood that some police encounters will deteriorate into use of force. Furthermore, the results of the OHRC's investigation reveals that, compared to incidents involving White people, use of force incidents involving Black people are more likely to result from proactive policing (i.e., police stops) than calls for service (see Wortley and Laniyonu 2020).

While racial profiling may contribute to the over-representation of racialized people within the justice system, over-representation in turn causes immense social and economic harm to racialized communities and families. Scholars often refer to such harm as collateral damage. The collateral damage associated with disproportionate racial minority incarceration, for example, can include economic hardship, social stigmatization, childhood trauma and underdevelopment, family dissolution, and poor physical and mental health (see Pinard 2010; Western and Wildeman 2009; Foster and Hagan 2009; Pager 2009).

A second major consequence of racial profiling is that negative police stop and search experiences can undermine the legitimacy of the police and the broader criminal justice system. Indeed, a growing volume of American (White and Fradella 2016; Glaser 2015; Zhao et al. 2015; Coraso et al. 2015; Gau 2012; Unnever et al. 2011; Gabbidon et al. 2011; Mbuba 2010; Higgins et al. 2010; Gibson et al. 2010; Slocum et al. 2010; Gabbidon and Higgins 2009; Lurigio et al. 2009; Higgins et al. 2008; MacDonald et al. 2007; Weitzer and Tuch 2006; Reitzel and Piquero 2006; Skogan 2006; Skogan 2005; Engel 2005; Hagan et al. 2005; Weitzer and Tuch 2005; Tyler 2005; Rosenbaum et al. 2005; Brown and Benedict 2002; Weitzer and Tuch 2002), British (Bradford 2011; Bradford et al. 2009; Bowling and Phillips 2002) and Canadian studies (Sprott and Doob 2014; Cao 2011; Wortley and Owusu-Bempah 2011a; Wortley and Owusu-Bempah 2011b; Wortley and Owusu-Bempah 2009; O'Connor 2008; Wortley et al. 1997; Wortley 1996) have firmly established that certain racial minority groups, including Black, Hispanic and Indigenous people, have much more negative views about the police and the wider justice system than White people.

Furthermore, additional research suggests that much of the racial disparity in perceptions of the criminal justice system can be explained by disproportionate exposure to police stop and search activities. Indeed, a number of studies have now established that people who are frequently stopped and searched by the police have less trust in the justice system and are more likely to view criminal justice institutions as biased. Research also suggests that indirect or vicarious exposure to racial profiling (through the experiences of family members and friends) can also have a negative impact on perceptions of the police, criminal courts and corrections (Zhao et al. 2015; Bradford 2011; Gabbidon et al. 2011; Wortley and Owusu-Bempah 2011b; Gibson et al. 2010; Rosenbaum et al. 2005; Bradford et al. 2009; Wortley and Owusu-Bempah 2009; Weitzer et al. 2008; Skogan 2006; Weitzer and Tuch 2005; Tyler and Wakslak 2004; Fagan and Davies 2000; Wortley et al. 1997; Wortley 1996).

Importantly, these same studies suggest that racial groups who have the highest level of involuntary contact with the police tend to have the most negative views of the police and the least trust in the justice system (see Wortley and Owusu-Bempah 2009). For example, Fearon and Farrell's 2019 survey of Toronto residents found that, consistent with official police statistics, Black people were more likely to be subject to police street checks than people from other racial backgrounds. They also found that people who had been subjected to street checks were less trustful of the police than those who had not been subjected to such police practices. It is thus not surprising that in this survey, Black people expressed far less trust and confidence in the police than respondents from other racial backgrounds (Fearon and Farrell 2019).

The 2019 CABL survey of Toronto residents, discussed above, produced similar results. In general, the survey found that, compared to their White and Asian counterparts, Black people have far less trust and confidence in the police and are much more likely to perceive the police as racially biased. A multivariate analysis reveals that Black distrust in law enforcement can be partially explained by higher rates of both direct and vicarious experiences with police stop and search practices (Wortley and Owusu-Bempah 2020).

The overall evidence suggests that police racial profiling helps explain why Black Canadians view the police as more racially biased than any other sector of Canadian society. For example, the 2015 Black Experience Project survey asked respondents the following question:

To what extent do you think that Black people in the GTA experience unfair treatment in the following situations because they are Black. Would you say this happens frequently, occasionally, rarely, or never?

The results reveal that 86.3% of respondents feel that Black people are frequently subject to unfair police treatment. By contrast, only 66.9% of respondents feel that Black people are subject to frequent unfair treatment within the employment sector, and only 40.8% believe they are frequently subjected to unfair treatment within the educational system (see Figure 7).

Figure 7: Percentage of respondents who feel that Black people are frequently treated unfairly, by sector
(2015 Black Experience Project Survey)

Sector	Percentage
Education	40.8
On the street	54
Housing	57.8
Employment	66.9
Policing	83.3
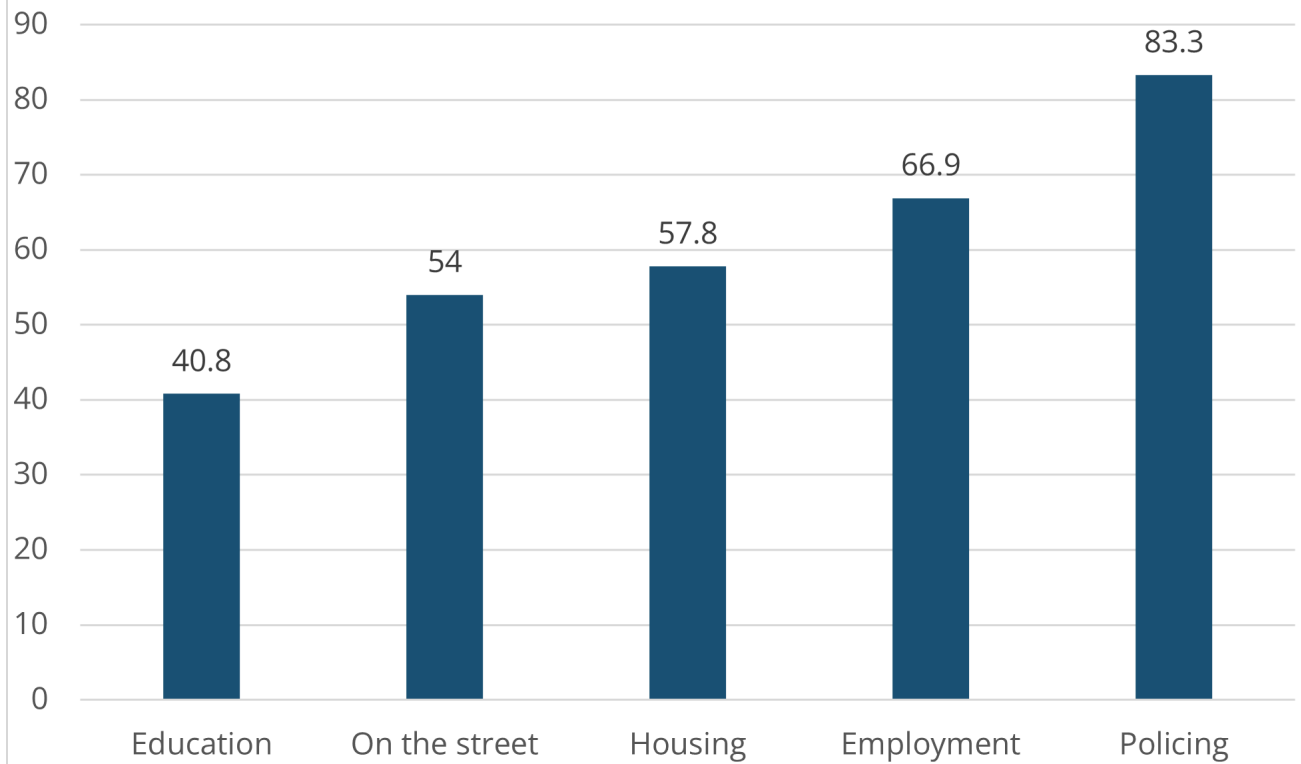
Negative perceptions of the justice system and/or a lack of trust in the police have profound consequences for the functioning of the justice system. For example, a number of researchers have found that people with poor perceptions of the justice system are less likely to cooperate with police investigations and provide testimony in court (Gibson et al. 2010; Slocum et al. 2010; Tyler and Fagan 2008; Hart et al. 2008; Brunson 2007; Stewart 2007; Tyler 2006; Brown and Benedict 2002). Furthermore, a number of theoretical perspectives, including Tyler's theory of Legitimacy and Compliance (Tyler 2006) and Sherman's Defiance Theory (Sherman 1993) maintain that people with poor perceptions

of the police and broader justice system are less likely to obey the law than those who perceive the system as legitimate. Indeed, an increasing number of empirical studies are providing strong empirical evidence in support of this hypothesis: people who perceive a high level of racial bias or discrimination within society are more likely to engage in criminal behaviour than others (see Burt 2015; Coroso et al. 2015; James and Warner 2015; Augustyn and Ward 2015; Penner et al. 2014; Intravia et al. 2014; Martin et al. 2010; Bouffard and Piquera 2010; Wortley and Tanner 2008; Stewart 2007; Kane 2005; Caldwell et al 2004; Tyler and Wakslak 2004).

In other words, individuals are better able to justify their criminal actions and neutralize their guilt when they feel that the justice system – and society itself – is fundamentally unfair or biased. Furthermore, because of their poor relationship and perception of the police, some racialized individuals feel that they must take personal responsibility for their own safety and resort to street justice, further increasing the level of violence in disadvantaged racial minority communities (see Coroso et al. 2015; Intravia et al. 2014; Stewart 2007). In sum, racial differences in stop and search activities contribute to negative perceptions of the police and justice system among racialized civilians. These negative perceptions, in turn, result in a lack of cooperation with the police and courts and ultimately contribute to racial minority involvement in crime and violence.

In sum, the research literature clearly illustrates that street checks – otherwise known

as police stop, question and search tactics – are not harmless and should thus not be condoned in the name of public safety or crime prevention. The empirical evidence strongly suggests that the costs are greater than the benefits. Indeed, racial biases with respect to police surveillance activities can have a hugely detrimental impact on individuals, communities, and the operation of the criminal justice system.

Eminent Canadian criminologists Tony Doob and Rosemary Gartner, after reviewing the extensive academic literature on police stops, also came to this conclusion:

The police have a number of important roles to play in public safety and in the operation of the criminal justice system. The findings that we cite here which suggest that certain approaches to crime and public protection either do not work or have overall negative impacts should be placed in this larger context. Perhaps the conclusion that one could come to that might be the least controversial would be the need to monitor and evaluate police policies related

to street stops to ensure that the benefits outweigh the possible harm that could come from such interventions. This is the same conclusion that one could apply just as easily to medical or educational interventions as police interventions.

An important point to remember is that one cannot conclude something is effective, just because assertions are made that it is. Data are important. And sometimes, the findings are complex. Certain kinds of activities of the police can have quite positive effects if the community is engaged in an appropriate fashion. But looking at the issue that we started with – street stops by the police of people who have not apparently committed an offence – it is quite clear that to us that it is easy to exaggerate the usefulness of these stops, and hard to find data that supports the usefulness of continuing to carry them out. This is not to say that the police should not be encouraged to continue to talk to people on the street. But evidence that it is useful to stop, question, and/or search people and to record and store this information simply because the police and citizens "are there" appears to us to be substantially outweighed by convincing evidence of the harm of such practices both to the person subject to them and to the long term and overall relationship of the police to the community (Gartner and Doob 2017: A22).

A note on the retention of carding or street check data

One issue associated with the practice of carding or street checks is the retention of the personal information collected from these types of police-civilian interactions. As noted above, the police argue that this information is of high value with respect to future criminal investigations. It may, they argue, help identify crime victims, suspects and witnesses. Recently, it has also been argued that the retention of this type of intelligence-related data may help the police investigate and ultimately solve "cold cases." Critics, however, have argued that the retention of personal information in "known to police" datasets can cause serious damage to individuals. Furthermore, since Black people and other racial minorities are, in most cases, grossly over-represented in contact card or street check datasets, they are also much more likely to suffer from any negative consequences associated with the retention of this information.

Unfortunately, there has been no published research on exactly how – and how frequently – street check data has historically been used by police services or the extent that the use of street check data has impacted racialized individuals or communities. In order to systemically assess the impact of street check data, the police would have to dramatically increase transparency and release information to researchers. Important questions that can only be answered with improved data access include:

1. Historically, who has access to street check data and how often is this information used? For example, to what extent are street check data accessed by front-line patrol officers and criminal investigators? For what purposes? Do officers, for example, routinely access such data when they conduct traffic stops or respond to calls for service? To what extent do investigators use street check data to identify suspects or witnesses?

2. To what extent are street check data shared with outside police and public security agencies (e.g., CSIS, the Canadian Border Security Agency, American security agencies, etc.)?

3. To what extent are street check data shared with members of the public as part of employment, education or volunteer-related security checks? To what extent does the release of this information limit employment, educational and volunteer opportunities?

4. What type of information is provided within street check records? Of importance may be the notes, comments or observations police officers make during street checks about the civilians they interact with. For example, do officers make comments about the demeanour of civilians, their level of cooperation with the police, the people they are associating with, etc.?

5. To what extent does the information contained within street checks impact subsequent police decision-making? Does the information contained within street checks have an impact on how harshly or leniently civilians are treated during future encounters with the police?

Although relevant large-scale data about the uses – and possible misuses – of street check information have not been made available to the public or researchers, concerns have been raised. The following examples serve to illustrate how the retention of street check data may have a negative impact on civilians:

- In April 2012, Andrew Tysowski, a Carleton University student, was stopped by an Ottawa police officer for running a red light. When asked, Tysowski told the officer he had never been in trouble with the police before. However, after conducting a computer check in his patrol car, the officer allegedly returned to Tysowski and issued him a traffic ticket. According to Tysowski, the officer called him a liar and told him: "Don't be an asshole the next time. Anyone else it would be a warning, but because of your record from 2006, I am giving you a ticket."

  Concerned by the interaction and the idea that he might have a police record, Tysowski eventually filed a complaint with the Ontario Independent Police Review Directorate (OIPRD). When the OIPRD released their report into the complaint, Mr. Tysowski learned that his "record" stemmed from an incident, in 2006, when he had been taken off a bus by officers and questioned about a robbery. Although cleared of all suspicion, the officers involved produced a street check about the incident where they stated that they were making a note of Tysowski's negative attitude towards the police in the event he should ever apply to join the Ottawa Police Service.

  Tysowski stated that he wanted his street check record expunged because it could "show up anywhere" and could negatively impact his future opportunities and interactions with the police. This case provides an example of where negative subjective information from an earlier street check was seemingly used to justify harsher police treatment during a traffic stop. It is also clear that the information on the street check could have hindered Tysowski's subsequent employment opportunities (Adam 2012; Davies 2015).

- In February 2012, an officer from the Kitchener-Waterloo Police Service stopped a vehicle owned and driven by Andre McGann (*Her Majesty the Queen v McGann*). The officer detained McGann for questioning, ran a computer check on his driving and criminal record, requested information on known criminals associated with the address McGann indicated as his destination, called for police backup, asked McGann to exit his vehicle and subjected McGann to search. When asked to explain the stop, detention and search of McGann, the officer reported that one of factors that raised his suspicion was that McGann had been stopped and carded by the Toronto Police Service on three occasions in the past year. This case indicates that street check information is sometimes shared between different police services. This case also serves to illustrate how information from previous street check incidents may impact subsequent police suspicions and behaviour.

- As part of his Osgoode Hall criminal law program at York University's Osgoode Hall, George "Knia" Singh applied to take part in a ride-along with the Toronto Police Service. His application was denied and he could not participate in the ride-alongs with his fellow classmates. Although he does not have a criminal record, Mr. Singh claims that he was informed by police that his ride-along application was denied because his "community engagement" or "street check" record indicated prior association with serious criminals. Singh had long volunteered his time to work with at-risk youth in high-crime, socially disadvantaged areas of the city and believes that this is how his association with "criminals" was established. A police spokesman later confirms that street check records are often reviewed before approving police ride-alongs and that prior association with criminals might have a negative impact on the approval process. This case provides evidence with respect to how street checks – conducted in the name of police intelligence – could be used for security check purposes and ultimately damage civilian opportunities (Rankin 2016).

- Available information also suggests that carding or street check records have, in the past, been routinely released by the police as part of employment and/or vulnerable sector security checks. Information from street checks has also been used internally to assess police recruits (see Crib 2014; Price 2014; PACER 2012). There has thus been great concern about the accuracy of such reports and fears that the release of such information can cause damage to the employment prospects and volunteer opportunities of persons who have never been convicted of a crime. Such information could also damage the reputations of law-abiding civilians. For example, how would an employer or local school respond to street check information suggesting that a job applicant has criminal associates, been observed in a "high-crime" neighbourhood or been disrespectful towards police?

The above examples, although limited, exemplify valid concerns surrounding the retention, use and dissemination of personalized street check data. They demonstrate that the use of street check information often extends beyond the investigation of specific criminal incidents. In fact, street check information can potentially enhance police suspicion towards previously carded individuals and could be used to justify harsher treatment. Street check data might also be used as an alternative, non-conviction criminal record that could negatively impact employment, volunteer and educational prospects.

As Black communities are greatly over-represented in street check datasets, the negative impact of data retention will likely be greater on Black people than people from other racial groups. Fortunately, in 2017, the Ontario government introduced new regulations that have significantly reduced both the number of police street checks and police access to personal street check data. Furthermore, to their credit, over the past five years, both the Toronto Police Service and the Toronto Police Services Board have introduced policies that have further restricted access to historical street check data and information on regulated interactions (see Toronto Police Service 2016; Toronto Police Services Board 2016). These policies, in my opinion, will likely limit future harms caused by the retention

of this type of information. However, these policies do not address the damage to Black communities already caused by previous uses of street check data. Nor do these policies allay community fears that historical street check data – as well as historical information on other TPS non-conviction incidents – could still have negative consequences for members of Black communities.

Conclusion

What is perhaps most remarkable about racial profiling research is that, regardless of the research strategy used, the same constellation of results emerges. In general, research from Toronto and other jurisdictions suggests that:

- Racially biased policing is caused by a variety of factors including explicit (conscious) bias, implicit (unconscious) bias, statistical discrimination and systemic or institutional factors
- Regardless of the research methodology used, studies conducted in Toronto consistently find that Black civilians are more likely to stopped, questioned and searched (street checked) by the TPS than White people. The evidence reveals that the TPS engages in racial profiling or biased policing practices
- Racial differences are greater for TPS police searches than for police stops
- Racial differences in TPS stop, question and search activities remain after other legally relevant factors have been taken into statistical account
- Many TPS stops are conducted for purposes of "general investigation" rather than "individualized suspicion." The fact that Black people are more vulnerable to such "general investigation" stops is consistent with allegations of racial profiling by the TPS
- The "hit rate" or "success rate" for random police stops or checks is uniformly low. The police rarely identify criminal activity during such encounters. The hit rate for Black people is usually the same – or lower – than the hit rate for White people. These findings suggest that race-based criminal profiling is no more successful than randomized police checks
- The fact that Black people are much more likely to be stopped and searched by the police – but Black stops are no more successful than White stops – indicates that innocent Black civilians are much more likely to be subjected to arbitrary police investigations than innocent White people
- Research indicates that racially disproportionate police stop, question and search activities have major social consequences for Black and other racial minority communities. These consequences include: 1) damage to physical and mental health; 2) the gross over-representation of racial minorities in the criminal justice system; 3) a decline in the perceived legitimacy of the police and overall negative attitudes towards the police and broader criminal justice system; 4) reluctance to report criminal activity and a lack of cooperation in police investigations; 5) perceptions of injustice and a lack of faith in social institutions; and 6) higher rates of racial minority offending
- The crime prevention benefits of police stop, question, search and document practices are contested. Best estimates suggest that overall effects on crime reduction are small – much smaller than proponents claim. There is a growing

consensus among academics that the costs associated with the widespread, arbitrary use of aggressive police stop, question and search tactics far outweigh the potential benefits.

A large number of policy initiatives have been identified that might reduce racially biased policing and the negative impact of racially disproportionate stop, question and search practices. Recommended policy options have included: 1) improved screening of police recruits for racial bias and cultural competence (Nicholson-Crotty et al. 2019; Miles-Johnson 2019; Conti and Doreian 2014; Zimny 2015); 2) improved recruitment of racialized officers so that the police reflect the diversity of the communities they serve (Benton 2020; Donahue 2019); 3) improved training in race relations, implicit bias and cultural competency (Miller et al 2020; Davis 2015; Moon et al. 2018); 4) training in less aggressive and more respectful methods for dealing with civilians during police stops (Rosenbaum and Lawrence 2017); 5) improved community policing and focused deterrence strategies (Braga et al. 2020; Thomas and Burns 2019); 6) Regulation and policy that guides officer discretion with respect to stops and searches (Tulloch 2019); and 7) increased civilian oversight and police accountability mechanisms (Kwon and Wortley 2020; Nolan 2019; Walsh and Conway 2011). Many community members and researchers have also called

for more police transparency with respect to the collection and dissemination of data – including race-based data – that will enable better quality research into police activities, improved evaluation of anti-racism efforts and greater police accountability.

The arguments for and against police data collection

Over the past two decades, a fierce debate has taken place in Canada over the collection and release of official data on police stop and search activities. On the one hand, many community organizations and civil rights groups have called for the systemic collection

of stop and search data. They have also maintained that this data should be released to

the public on an annual basis. On the other hand, many police organizations and police associations have, in general, fiercely resisted calls for mandatory data collection on police stop, question and search activities. This section of the report briefly reviews the major arguments for and against data collection. It is important to review these historical arguments in order to highlight recent progress with respect to TPS race-based data collection policies.

The argument for data collection

1. *Data collection may directly reduce racially profiling and other forms of racially biased policing.* Data collection is not only a research exercise. It is a form of police monitoring and accountability. Officers who engage in racial profiling – out of racial animus, racial stereotyping or some other reason – will be less likely to engage in biased stop and search activities if they know that their actions will be directly reviewed by their supervisors. Data collection makes what has been called the "invisible" side of policing more "visible." Internal benchmarking will also help police managers identify potentially biased officers and target them for re-training or disciplinary action.

   The question is: Without monitoring, how do police supervisors know what their officers are doing when they hit the street? This argument is also consistent with the results of other police monitoring practices. For example, in the United States, it is well known that racial disparities in police use of force declined significantly after officers were mandated to fill out "use-of-force" forms every time they drew their gun or used force against a civilian (see review in Wortley 2006). Although limited, research in both England (Miller 2010) and the United States (Warren et al. 2009) also suggests that data collection may have contributed to a decline in racially biased policing within many jurisdictions. In sum, without proper monitoring, individual police officers will be better able to hide or conceal racial profiling practices.

2. *Data collection may improve police relationships with racialized communities.* As discussed at length above, Black Canadians and other racial minority groups have significantly less trust and confidence in the police than White people. Data monitoring of police stop and search activities might improve these perceptions in several ways. First of all, monitoring could actually reduce racially biased policing. Secondly, data monitoring provides transparency. It demonstrates that the police have nothing to hide and are willing to share their actions with the public. By contrast, the refusal to collect and release data could be perceived as evidence that the police are "circling the wagons" and trying to prevent the release of information that may not portray them in a positive light. Finally, the willingness to collect and release data on stop and search activities may convince the public that the police are taking the issue of racially biased policing seriously and are trying to reduce the impact of profiling on racialized communities.

   To date, very little research has explored the impact of police data collection on public attitudes. However, British researchers have demonstrated that, since stop and search data collection was mandated in England and Wales, racial minority group confidence in the police has improved significantly (see Bradford 2011; Myhill and Beak 2008).

3. *Data collection will assist in the evaluation of anti-racism and anti-racial profiling programs.* Over the past two decades, Canadian police services have introduced a wide variety of anti-racism initiatives designed to reduce racially biased policing and improve police relationships with racialized communities. These initiatives include anti-racism/cultural sensitivity training; programs to increase the recruitment of racialized officers and the establishment of police-community consultative committees. Recently, a number of police services, including the Ottawa Police Service, have established explicit anti-racial profiling policies. Unfortunately, as Stenning (2003) notes, none of these anti-racism initiatives have been subject to a high-quality evaluation.[24] The question is, therefore: without the collection of data on police stop and search activities, how can we tell if anti-profiling policies are effective or not? You simply can't. Furthermore, without data collection it would also be difficult, if not impossible, to properly evaluate the effectiveness of other anti-racial profiling strategies including anti-profiling training, cameras in police cruisers, etc.

4. *The monitoring of police stop and search activities is an important management tool.* One of the greatest challenges facing the establishment of data collection or monitoring programs is the perception that the utility of such programs is limited to the investigation of racial bias. Nothing could be further from the truth. Besides race, data collection forms should be designed to collect information on the age, gender and home address of

   the civilian, whether the stop was a pedestrian or vehicle stop, the time

and location of the stop, the reason for the stop, whether the civilian was searched or not, and the outcome of the stop (no action, warning, ticket, summons, arrest, etc.).

Thus, besides racial differences in exposure to the police, these data can be used for a variety of other purposes including: 1) measuring gender and age differences in exposure to the police; 2) police stop and search behaviours within specific neighbourhoods; 3) the reasons officers decide to stop drivers and pedestrians; and 4) the effectiveness of police stops. In other words, an effective data collection system can assist police supervisors with respect to monitoring the activities of their officers in the field and establishing measures of effectiveness and productivity.

As Tillyer and his colleagues (2010: 87) note, once a data collection system has been established: "Law enforcement agencies can now assess and begin to understand the decision-making process of their officers with the assistance of these data. The trend toward vehicle stop data collection across the nation offers several advantages to police agencies.

In particular, these efforts can assist in informing agencies about patterns and trends in disparities in the stop and search outcomes

for specific racial/ethnic groups. In undertaking this self-evaluation, agencies demonstrate a commitment to unbiased policing, particularly in situations where an agency voluntarily initiates data collection or goes beyond what is legislatively or judicially required of them. Moreover, understanding the patterns of vehicle stops and their outcomes can assist agencies in the effective and efficient allocation of resources which are often prime considerations in the present budget conscious environment.

Cleary the advantages of such a data collection system would extend to pedestrian as well as vehicle stops.

The final argument in favour of data collection is more philosophical than practical. It concerns the ownership of information about the police and police actions. It must be remembered that, since their creation, police services tend to be developed as para-military organizations. As such, they often view information as "intelligence" and try to use this intelligence to their advantage. Indeed, besides data on stop and search activities, it is very difficult to access many types of information on coercive police operations – including information on police use of force, local arrest data, data on police remand decisions, police complaints, etc. Often such information is only made available through freedom of information requests.

It is also important to note that modern police organizations often have public relations departments or public relations personnel. As with other corporations, one might argue that it is the job of police public relations personnel to selectively release information that will establish a positive image of the police service, while preventing the release of information that could "harm" the reputation of the service. Police advocates have argued that such image management is important with respect to maintaining public confidence in the police and ensuring proper police functioning. Others, however, have maintained that, at least in theory, the police work for the public. As such, the police must be transparent and both collect and release all information that the general public – or particular groups within the public sector – demand. As Kane (2007: 778), argues, police departments sometime unwisely operate as if police-generated records are propriety data.

The public funds police departments and all dimensions of their coercive activities. The public *owns* all information related to police operations and processes. Thus, police departments should be required not only to collect data on coercive outcomes and processes but also to make them generally available to the public (original emphasis).

As we shall see, such views are not often shared by police officers or their supervisors.

The argument against data collection

It is also important to note that the advantages of police data collection need to be weighed against the potential challenges or consequences of such endeavours. Below we outline a few of the major arguments against data collection that have been provided by police organizations and their advocates.

1. *Data collection will damage police officer morale.* A number of critics have argued that police officers are not supportive of efforts to monitor their activities, and that forcing police services to collect data on police stop and search activities will damage police morale. Damage to police morale, in turn, could lead to a drop in job satisfaction and productivity.

Unfortunately, we could not locate any research that addresses this claim. For example, we could not locate information to suggest that the police services in Britain or the United States – where data collection is mandated – have lower morale than the police services where data collection has not yet been instituted. However, there is evidence to suggest that the "poor morale" argument has been repeatedly used by police organizations and police unions to resist other public accountability measures, including police use-of-force regulations, public complaints commissions, civilian oversight agencies, officer name tags and the establishment of Ontario's Special Investigations Unit (see Sewell 2010; Morin 2008; Wortley 2006).

In sum, the potential impact of data collection on officer morale and job satisfaction is an important research question that deserves to be investigated. However, we must also consider the possibility that, despite initial resistance, police officers will eventually accept data collection responsibilities as part of their job description and conduct themselves in a professional manner. Finally, it is possible that the impact of data collection on officer morale could be minimized if data collection can be sold as part of a wider intelligence gathering/performance monitoring system rather than a tool for identifying racial profiling.

2. *Data collection will compromise public safety*. It has also been argued that forcing the police to collect data on the people they stop and search will lead to "de-policing." In other words, police officers will deliberately reduce the stops and searches they conduct on racial minority civilians in order to avoid allegations of racial bias. Such de-policing behaviours, it is argued, will have

a detrimental impact on the crime rate. This argument was made by Craig Bromell, then-President of the Toronto Police Association, in the aftermath

of the 2003 *Toronto Star* series on racial profiling. Brommel maintained that

if data collection was imposed on the Toronto Police Service, police officers would simply stop engaging in proactive policing within racial minority communities and that this would give racial minority criminals a free reign.

Others have argued that data collection will take valuable time and resources away from police crime-fighting and prevention activities, and that this will,

in turn, lead to more crime. However, we could find no empirical evidence to support this claim. Indeed, since data collection was mandated, crime rates – including violent crime rates – have declined significantly in both Great Britain and the United States (Siegel et al. 2010). Interestingly, crime rates have also declined in regions without data collection – perhaps indicating that data collection procedures have little to do with the causes of crime. Finally, there is little evidence to suggest that data collection has actually reduced police stop and search activities. Indeed, the number of stops and searches recorded by the police in both England and New York City has increased significantly since data collection began (see Jones-Brown et al. 2010; Miller 2010).

3. *Data collection is too expensive*. A number of critics have argued that police data collection is too expensive and would take valuable resources away from other important policing functions. By contrast, others have argued that, after initial start-up costs, police data collection is relatively efficient and inexpensive. Indeed, many police services already have data collection processes in place that document police-civilian encounters (i.e., contact cards or electronic reports) and only minor adjustments are required to move to the full collection of stops data.[25]

It is true, however, that some of the more advanced benchmarking techniques, discussed above, can be quite expensive. Nonetheless, the costs of using these approaches can be offset when the police enter into partnerships with university researchers. Such partnerships are often successful at securing external funding and can thus minimize the impact on police budgets. Furthermore, there are many university researchers who would be willing to provide their methodological expertise and analytical skills for free – as long as they and their graduate students can have access to police data for publication or dissertation purposes. In other words, working with university researchers is much cheaper than dealing with private consultants. Finally, police services in both England and the United States have been able to deal with the financial burden of data collection without sacrificing service. There is no reason to believe that Canadian police services can't do the same.[26]

4. *Data collection will compromise officer safety*: Some have argued that data collection will put police officers at higher risk of serious injury or death. This is a somewhat difficult argument to understand – especially since the same critics often argue that data collection will also reduce the overall number of police-civilian encounters (a fact that would reduce the overall risk of a violent confrontation).

Perhaps they are arguing that data collection will change the nature of how the police deal with civilians once a stop is initiated. For example, because they fear allegations of racism, police may be more reluctant to search or use force against racial minority suspects who may be carrying weapons. Nonetheless, we could find absolutely no evidence to suggest the number of police officers injured or killed on the job has increased within jurisdictions that have mandated data collection.

It is also important to note that similar concerns about officer safety were voiced when new use-of-force regulations mandated the completion of use-of-force forms every time the police pulled their guns or used physical force against a civilian. The argument then was that officers may hesitate to use force in dangerous situations because they do not want to perform extra paperwork. Now, decades later, we know that such concerns were unfounded. Indeed, American research suggests that since the implementation of use-of-force regulations, the number of officers seriously injured in the line of duty has significantly declined – as have the number of civilians killed or injured by the police (see Wortley 2006).

5. *The data could be used in court*. Some critics fear that, if available, aggregate statistics on police stop and search activities will be increasingly used by lawyers in both the criminal and civil courts. Such data, they worry, could clog the criminal courts with cases that allege "racial profiling" and thus slow down the court process and ultimately damage conviction rates. Others worry that police data could increase civil claims alleging police racism, and that such allegations will increase legal costs and claims payments. We cannot discount this possibility. However, it is important to note that such cases have existed before data collection and will likely exist after data collection has begun. Furthermore, all cases must be judged on their own merit, and it is unlikely that data alone will prove racial bias in any particular case. Furthermore, if data collection helps to reduce racial profiling, as suggested above, fewer racial profiling cases could emerge. Finally, it is possible that high-quality research on police stop and search may help the courts perform their function and make wise decisions that are consistent with the principles of justice. Fear of data – and its possible use in court – is not a valid reason to ban data collection.

6. *The data could damage racial minorities*: In an interesting twist, some have argued that data on police stop and search activities could actually damage racial minority communities. They maintain that, while some may interpret the over-representation of racial minorities in official stop and search statistics as evidence of bias, others might assume that this data "proves" that certain racial groups are more crime-prone than others. Stop and search data, in other words, might increase racial stereotyping within Canadian society. This logic is similar to the justification for banning all "race-crime" statistics in Canada (see Wortley 1996).

It is interesting that this paternalistic justification for banning race-based data collection also serves to prevent the effective identification of racial bias in the justice system. Furthermore, the current ban on race-crime statistics has in no way prevented crime-related racial stereotypes from emerging in Canada. Indeed, racialized images of crime dominate the news media – where the vast majority of citizens get their information on crime-related issues. It fact, even with the current ban on race-crime statistics, Canadians actually tend to greatly over-estimate the involvement of racial minorities in criminal activity (see Wortley and Owusu-Bempah 2011).

These are but a few of the arguments that have been put forward by people who reject or resist calls for police data collection on stop and search activities. Finding a consensus on this issue is only a distant hope. In many ways, the debate is split between people who prioritize the interests of the racial minority community members and researchers who want data collection, and people who are more sympathetic to the interests of the police and police organizations.

One might argue that many – if not all – of the arguments against race-based data collection within policing have been overcome and are thus not worthy of further discussion. Indeed, over the past two years, the TPS and several other Ontario police services appear to have recognized the need for race-based data and have subsequently developed policies promoting the collection and analysis of this type of information. Finally, a quarter-century after race-based data collection was recommended by the Commission on Systemic Racism in the Ontario Criminal Justice System (1994), it appears that police services in Ontario are recognizing that data collection may help reduce racial bias, improve public perceptions of the police, and promote racial equity within law enforcement – I am cautiously optimistic. In the past two years, I have witnessed more positive change on the race-based data collection front than during the previous 25 years. However, there is also cause for cynicism. In my opinion, arguments against data collection may still exist, especially among front-line officers. Furthermore, resistance to data collection may still cause serious delays with respect to the collection and release of race-based data and the quality of the race-based data that is ultimately compiled.

How do front-line officers view the issue of race-based data collection? Do they feel that such data collection is necessary? Do they feel that such data collection might have a negative impact on their careers? Will the race-based data that is produced by the police be of high or low quality? Will the type of data collected enable or impede advanced analysis of the racial profiling issue? Unfortunately, at the time of finalizing this report (September 2021), the TPS has not yet released any of the race-based data mandated by the TPSB's

Policy on race-based data collection, analysis and public reporting (Toronto Police Services Board 2019). Furthermore, as discussed below, plans to collect data on police stop, question and search tactics have yet to be finalized. Thus, in the last section of this report, we highlight a possible multi-method strategy for collecting high-quality data dealing with the issue of racially biased policing in Toronto.

Recommendations for data collection on police stop, question and search activities

As the above review suggests, no study is perfect. Different types of methodologies have different types of strengths and weaknesses. The strengths of qualitative studies (contextual detail, information on emotional impact, etc.) are different than the strengths of quantitative studies (large sample size, replicability, etc.). As a result, researchers often recommend a multi-method approach when addressing complex issues such as police stop and search practices. This strategy is sometimes referred to as triangulation (see Hammersley 2008; Denzin et al. 2006; Bryman 2007). The argument is that by using multiple research methods to address the same topic, we are better able to understand social realities.

Furthermore, if different research methods tend to yield the same types of results, we can have more confidence in their accuracy. For example, both survey data and official police statistics, including data from several Toronto studies, suggest that Black people are more likely to be stopped, questioned and searched by the police than White people, even after other relevant factors have been taken into account. The fact that such findings were produced by two very different research methodologies should strengthen our confidence that these findings reflect reality. Furthermore, findings using one type of method may help us understand the results of a study that used an entirely different research strategy. For example, qualitative interviews will help us understand the emotional impact of racial profiling and help explain survey research findings which suggest that racial minorities have a lower opinion of the police than White people.

Also, while official data collection may help us measure the extent of racial disproportionality in police stop and search activities, qualitative methods may help us better understand police decision-making processes. As Tillyer et al. (2010: 87) note:

Future research may have to advance beyond quantitative analysis and explore qualitative studies to address the underlying motivations for officer decision-making. This alternative approach to studying the existence and extent of bias-based policing likely will require asking officers to describe their decision-making process through the use of interviews or focus groups.

In light of these findings, we recommend that all Canadian police services adopt a multi-method approach to race-based data collection and research into diversity issues and

anti-racism initiatives. It should be noted that, in spirit, the TPSB's *Policy on Race-based*

Data Collection, Analysis and Public Reporting (www.tpsb.ca/policies-by-laws/board-policies/177-race-based-data-collection-analysis-and-public-reporting) is largely consistent with many of the following recommendations:

1. The first step in the research process should involve the formation of a research or evaluation committee. This committee would be responsible for

   the development and implementation of the research and evaluation plan. This committee should consist of police personnel, community representatives and academic researchers. It is important that researchers be involved from the beginning of the research process, as they should have the methodological training to ensure the development of a sound methodological strategy.

   As discussed above, the use of university-based academics, trained in social science methodology, will likely be much less expensive than the use of private consultants. Furthermore, the use of university researchers might contribute to the perceived objectivity of the project.[27]

   The selection of the researchers is an important step. Ideally, researchers should be approved or accepted by both the police and community representatives of the research committee. If a consensus on a single researcher or research team cannot be found, the committee should ultimately form a research team that consists of both researchers that are acceptable to the police, and researchers that are acceptable to community members. Priority should be given to Black, Indigenous and other researchers of colour who have

lived experiences with the issues. Caution should be directed at researchers who have long established relationships with policing organizations. Indeed, critics have noted that some "evidence-based" researchers, popular with government and police officials, have a pro-police bias that ensures access to data and lucrative research contracts.

2. We recommend that police services establish a permanent data collection system to record information on all stops of civilians. This data system should record information on both traffic stops and stops involving pedestrians. The information to be collected on each stop should include: the date of the stop,

the time of the stop, the location of the stop (x-y coordinates), the reason for the stop and the outcome of the stop (no action, warning, ticket, summons, charges, arrest, etc.). The documentation of stop outcomes is particularly important

as it can be used to calculate race-based "hit rates" (the proportion of stops that result in the discovery of illegal activity). Such rates are an important measure of racial profiling and can be used to highlight the proportion of each racial group who are subject to unnecessary police attention. Data collection strategies should also document whether the person or vehicle involved in the stop was subject to a pre-arrest or post-arrest search. The age, gender and racial background of the person stopped should also be recorded. Ideally, the data collection procedure would also record the full name and home address of the individuals stopped. This would help the researchers identify individuals who are stopped multiple times, in a given time period,

as well as individuals who reside outside of the study jurisdiction.

Such information would help researchers determine if people are more likely to be stopped in their own neighbourhoods or when they travel to other areas of the city. For example, previous information suggests that Black people in the United States are most likely to be stopped when they travel into predominately White neighbourhoods – a finding that is consistent with

the "out-of-place" hypothesis (see Meehan and Ponder 2002). Of course, the research committee might identify other information that should be recorded.[28]

3. We recommend the development of a permanent data collection system for the following reasons:
   a. A permanent system will allow for comparisons over time. Trend data could be used to identify emerging patterns related to police stop and search activities and evaluate the effectiveness of anti-racism policies
   b. Data monitoring of stop and search activities may reduce racial profiling (as discussed above). Thus, the benefits of data monitoring would be severely limited if police services only engage in a time-limited pilot project
   c. During a time-limited pilot project, the police may change their normal activities to avoid allegations of racial bias. However, they may return to normal activities after the study is complete.

4. We recommend that the performance of front-line officers be based on the quality and reliability of the race-based data that they collect. Unfortunately, some officers may have a negative attitude towards race-based data collection and research. Others may be reluctant to record the racial background of the people they interact with because they want to avoid allegations of racial bias. Thus, without making data quality part of officer performance evaluation, the likelihood of missing or low-quality racial data increases.

5. We recommend that police services perform periodic reliability checks to determine the quality of race-based data and identify officers who are non-compliant with race-based data collection policies. Officer reports of civilian race, for example, could be compared with licence photos, dashboard camera footage, body-camera footage or civilian self-reports. Data reliability could be determined through a correspondence analysis that compares officer racial classifications with classifications made by an independent third party or by the civilian self-reports of racial identity.

6. In addition to census and adjusted census benchmarking (which will capture per capita stop rates), we also recommend the use of one or more advanced benchmarking techniques (see Wortley 2019)). The exact benchmarking techniques to be employed should be decided by the research committee. However, we recommend the use of observational benchmarking, because it has the best chance of capturing other factors that may be related to police decisions to stop and search civilians (including street availability).

Due to the high cost, it would be impossible to conduct observational benchmarking on a continual basis. Thus, we recommend that observational benchmarking sub-studies be conducted periodically (perhaps every two to five years) to supplement the regular collection of stop and search data.

It would also be impossible to conduct benchmarking in all neighbourhoods. Thus, we suggest that observational benchmarking should be conducted on a random sample of both high- and low-stop areas within the study jurisdiction.

Finally, if possible, we recommend that the research committee work with academic researchers to secure external funding for these benchmarking sub-studies.

7. We recommend that police managers use internal benchmarking techniques

to identify individual officers who are possibility engaging in racially biased stop and search practices. Once identified, these officers can be brought in for discussion, re-training, discipline, or termination. Although the research committee may assist police supervisors in the development of internal benchmarking techniques, the names of individual officers do not have to be released to the research committee or the general public. The use of internal benchmarking could remain an internal strategy for identifying problematic officers. However, the research committee may want to know how many officers have been identified as potentially biased through internal benchmarking techniques and how these officers were dealt with. The release of such raw numbers would not reveal the identity of individual officers.

8. The collection of official police data should be supplemented with periodic surveys of the general public. General population surveys should collect information on self-reported contacts with the police, as well as respondent attitudes and perceptions of the police and wider criminal justice system. Survey data on self-reported stops could be compared with official stop data in order to identify significant commonalities or differences. Surveys could also be used to conduct multivariate analyses and determine whether racial differences in stop and search activities can be explained by other factors including age, area of residence, local crime rates, driving habits, use of public spaces, self-reported drug and alcohol use and self-reported involvement in criminal activity. Importantly, if such surveys are conducted on a periodic basis (every two to five years), the data could be used to determine if racial differences in stop and search activities are declining or increasing and if attitudes towards the police are improving or getting worse. In other words, survey research data over time could be used to evaluate the effectiveness of anti-racism and anti-profiling policies.

9. Periodic surveys should also be conducted on the police themselves. Such surveys could be used to measure the impact of data collection on officer morale and job satisfaction, officer attitudes towards anti-racism programs or policies, and officer decision-making with respect to stop and search tactics. Such surveys could be expanded to measure prejudice and stereotyping, attitudes towards specific racial minority groups and racial minority crime and opinions about the effectiveness of various anti-racism policies. Of course, these surveys could address any other topics of interest to the research team or police managers. We recommend that such officer surveys be conducted every two to five years to better facilitate the evaluation of anti-racism initiatives.

10. We recommend the periodic implementation of qualitative research methods. These methods should include interviews and focus groups with both community members and police officers. Such strategies could collect more detailed information about public perceptions of police stop and search tactics; the impact of police stops on individuals and communities; opinions about whether police anti-profiling and anti-racism strategies are working; and how anti-racism strategies might be improved.

Such qualitative strategies could also measure public awareness of data collection efforts and research results, and gauge the impact that research is having on public opinion. As discussed above, qualitative methods could also be used to examine the impact of anti-profiling policies and data collection on officer morale and how such policies have impacted police behaviour on the street. Furthermore, interviews and focus groups could be used to investigate police decision-making and how race and other factors influence –

or do not influence – the actions police take as they perform their patrol duties.

11. Finally, we propose that reports documenting the results of all data collection and research activities be released to the public on an annual or biannual basis. This is the only way to guarantee transparency. However, we also feel that reports should not be released until the research team has conducted a full analysis of the data. Furthermore, reports should not be released until police officials have been fully briefed. Reports should be released during a coordinated press conference in which the data can be fully explained. This will reduce the chance that the data will be used inappropriately (although that possibility can never be totally eliminated).

12. De-identified police datasets, documenting all police stop and search activities, should be released to the general public on an annual or biannual basis. This process will increase transparency and permit data analysis and interpretation by researchers and community members not involved in the formal, police-led research process.

In conclusion, it is quite apparent that high-quality, race-based data collection by the TPS

is needed to fully examine police stop, question and search activities and evaluate the effectiveness of TPS anti-racism policies. In recent years, police services have sometimes modelled themselves after major corporations. They have started to develop "mission statements" and "business plans," and have started to refer to the public as clients or customers. It is hard to imagine a major corporation developing a major policy without also developing a strategy for evaluating the effectiveness of that policy. Police services need to follow the same path. Anti-racism policy without proper monitoring and evaluation can be dismissed as nothing but symbolic window-dressing. Without proper monitoring, little will change with respect to police-race relations over the next decade.

A note regarding TPS plans to collect stop data

According to information provided by the OHRC, the Toronto Police Service was slated

to begin collecting race-based data on traffic and pedestrian stops on January 1, 2021. However, at this stage, the TPS only plans to collect data on stops that actually result in written warnings, tickets, charges or arrests. In other words, it only plans to collect data

on "successful" stops that clearly uncover evidence of illegal activity. If true, this plan is highly deficient and highly inconsistent with best practices in racial profiling research. This strategy is also inconsistent with Justice Tulloch's focus on the elimination of "carding." If you recall, Justice Tulloch defines carding as random or arbitrary police stops or interactions that result in the documentation of civilian personal information for police intelligence purposes. Clearly, police stops that result in formal warnings, tickets, charges or arrests can never be considered "carding" incidents because the legal justification for

the encounter is transparent. In other words, although the TPS may want to eliminate "carding," they appear to be designing a data collection strategy that will not in any way document "carding" incidents.

As discussed above, an important element of racial profiling research is the documentation of all police stops and post-stop activities (e.g., vehicle searches, pat down searches, case outcomes, etc.). At the heart of racial profiling debate are claims that Black and other racialized people are more likely to be subject to unnecessary or unwarranted police stops and searches: race-based "fishing expeditions" that rarely uncover illegal activity. Researchers have recently argued that one strategy for uncovering racial bias is the analysis of race-based hit rates: the proportion of all stops that result in the discovery of illegal activity.

While Canadian data is not available, we know from American and British research (discussed above) that police stop, question and search activities rarely uncover direct evidence of criminal activity. The research record is worth repeating. Between 2004 and 2012, the NYPD conducted approximately 4,135,000 stop, question and frisk investigations.[29] Only 46,000 of these stops – a mere 1.1% – resulted in the seizure of illegal contraband and only one out of every thousand stops (0.01%) resulted in the seizure of an illegal firearm (see Torres 2015). A similar picture emerges in England. As documented by Bowling and Phillips (2007), the per capita police stop rate in England and Wales is approximately 6.5 times greater for Black people than for White people. However, the hit rate for both Black and White people is almost identical – about one percent of stops for both groups result in the discovery of illegal activity. The fact that these hit rates do not vary by race might be interpreted as an absence of racial bias. However, the hit rate figures, combined with the per capita stop and search rate, shed light on another reality: every year – innocent Black people in England and Wales are 6.5 times more likely than innocent White people to endure an unnecessary stop and search encounter with the police.

At this stage, the TPS is not collecting race-based data on police stops – arguably the majority of police stops – that do not result in legal action. Such an approach would prevent the collection of data on "carding" incidents and also prevent an analysis of race-based hit rates. In other words, the TPS plans would prevent an adequate examination of the racial profiling issue and ultimately contribute to more confusion, denials and delay.

As discussed above, the TPS originally stated that they would begin data collection on police stops in January 2021. However, in correspondence dated September 8, 2021, the TPS clearly indicates that data collection on police stops still has not commenced. The correspondence notes: "The TPS is currently working on updating its systems capacity and resource workflow to collect stop data, including both traffic and pedestrian, and lower uses

of force. These areas are important to get right for sustainable collection that supports robust and actionable insights." In order to truly address racial profiling, the TPS must collect information on all stops and searches – especially stops and searches that do not result in the identification of illegal activity.

References

Anderson, E. 1990. *Streetwise: Race, Class and Change in an Urban Community.* Chicago: University of Chicago Press.

Anderson, K. 2013. "Diagnosing Discrimination: Stress from Perceived Racism and the Mental and Physical Effects." *Sociological Inquiry* 83 (1): 55–81.

Aguilar, Bryann. 2020. "Criticism of police in wake of protests 'more than fair,' Toronto police chief says," *CP24* (4 June 2020), online: www.cp24.com/news/criticism-of-police-in-wake-of-protests-more-than-fair-toronto-police-chief-says-1.4969953.

Apel, R. 2015. "On the Deterrent Effect of Stop, Question and Frisk." *Criminology and Public Policy* 15 (1): 31–56.

Augustyn, M. B., and Ward, J. T. 2015. "Exploring the sanction-crime relationship through

a lens of procedural justice." *Journal of Criminal Justice* 43: 470-479.

Barlow, D., and Barlow, M. 2002. "Racial Profiling: A Survey of African American Police Officers." *Police Quarterly* 5 (3): 334-358.

Barnes, B. 2010. "The Hawthorne Effect in Community Trials in Developing Countries." *International Journal of Social Science Methodology* 13 (4): 357-370.

Barrows, J., and Huff, R. 2009. "Gangs and Public Policy: Constructing and Deconstructing Gang Databases." *Criminology and Public Policy* 8 (4): 675-704.

Batton, C., and Kadleck, C. 2004. "Theoretical and Methodological Issues in Racial Profiling Research." *Police Quarterly 7* (1): 30-64.

Benton, M. 2020. "Representation is not enough: Symbolic representation and perceptions of police." *Administration and Society* 52 (5): 794-822.

Bergner, D. 2014. "Is Stop and Frisk Worth It?" *The Atlantic* (April): Downloaded from: https://www.theatlantic.com/magazine/archive/2014/04/is-stop-and-frisk-worth-it/358644/.

Bostock, M., and Fessenden, F. 2014. "Stop and Frisk is all but gone in New York." *New York Times*, September 19.

Bouffard, L. A., and Piquero, N. L. 2010. "Defiance Theory and Life Course Explanations

of Persistent Offending." *Crime and Delinquency* 56 (2): 227-252.

Bowling, Ben and Leanne Weber. 2011. "Stop and Search in the Global Context: An Overview." *Policing and Society* 21 (4): 480-488.

Bowling, B., and Phillips, C. 2007. "Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search." *Modern Law Review 70* (6): 936-961.

Bowling, B., and Phillips, C. 2002. *Racism, Crime and Justice*. London: Pearson Education Ltd.

Boyce, J. 2015. *Police Reported Crime Statistics in Canada – 2014*. Ottawa: Canadian Centre for Justice Statistics.

Bradford, B. 2011. "Convergence, Not Divergence? Trends and Trajectories in Public Contact and Confidence in the Police." *British Journal of Criminology* 51: 179-200.

Bradford, B., Jackson, J., and Stanko, E. 2009. "Contact and Confidence: Revisiting the Impact of Public Encounters with the Police." *Policing and Society* 19 (1): 20-46.

Braga, A., Brunson, R., and Drakulich, K. 2019. "Race, Place and Effective Policing." *Annual Review of Sociology* 45 (1): 535-555.

Braga, A. 2015. "Focused Deterrence and the Promise of Fair and Effective Policing." *Criminology and Public Policy* 14 (3): 465-470.

Braga, A. 2012. "Getting Deterrence Right? Evaluation evidence and complementary crime control mechanisms." *Criminology and Public Policy* 11: 201-210.

Brewer, R. M., and Heitzeg, N. A. 2008. "The Racialization of Criminal Punishment: Criminal Justice, Colour-Blind Racism and the Political Economy of the Prison Industrial Complex." *American Behavioural Scientist* 51 (5): 625-644.

Brown, B., and Benedict, W. R. 2002. "Perceptions of the Police: Past Findings, Methodological Issues and Policy Implications." *Policing: An International Journal of Police Strategies and Management* 25(3): 543-580.

Brunson, R. 2015. "Focussed Deterrence and Improved Police-Community Relations: Unpacking the Proverbial Black Box." *Criminology and Public Policy* 14 (3): 507-514.

Brunson, R. 2010. "Beyond Stop Rates: Using Qualitative Methods to Examine Racially Biased Policing. Pp. 221-238 in in Rice, S. and White, M. (Eds.) *Race, Ethnicity and Policing: New and Essential Readings*. New York: New York University Press.

Brunson, R. 2007. "Police Don't Like Black People: African American Young Men's Accumulated Police Experiences." *Criminology and Public Policy* 6 (1): 71-102.

Bryman, A. 2007. "Barriers to Integrating Quantitative and Qualitative Research." *Journal of Mixed Methods Research* 1(1): 8.

Burt, C. H., and Simons, R. L., 2015. "Interpersonal racial discrimination, ethnic-racial socialization, and offending: risk and resilience among African American females." *Justice Quarter* 32 (3): 532-570.

Caldwell, C. H., Kohn-Wood, L. P., Schmeelk-Cone, K. H., Chavous, T. M., and Zimmerman, M. A. 2004. "Racial discrimination and racial identity as risk or protective factors for violent behaviours in African American youth adults." *American Journal of Community Psychology* 33: 91-105.

Cao, L. 2011. "Visible Minorities and Confidence in the Police." *Canadian Journal of Criminology and Criminal Justice* 53 (1): 1-26.

CBC News. 2018. "Toronto police chief acknowledges racial profiling challenges in wake

of human rights report." www.cbc.ca/news/canada/toronto/saunders-ohrc-response-1.4940677.

CBC News. 2015. "Hamilton Police Disproportionately Stop and Question Black People." (July 23).

Chan, W., and Mirchandani, K. 2001. *Crimes of Colour: Racialization and the Criminal Justice System in Canada.* Peterborough: Broadview Press.

Charest, M. 2009. *Mécontentement Populaire Et Pratiques d'Interpellations Du SPVM Depuis 2005: Doit-on Garder Le Cap Après La Tempête* Brouillon (Draft). Montreal: SPVM.

Chauhan, P., Warner, R., Fera, A., Balazon, E., Lu, O., and Welsh, M. 2015. *Tracking Enforcement Rates in New York City – 2003-2014*. New York. John Jay College of Criminal Justice.

Cole, D. 1999. *No Equal Justice: Race and Class in the American Criminal Justice System*. New York: The New Press.

Conti, N. and Doreian, P., 2014. "From here on out, we're all Blue: Interaction order, social infrastructure and race in police socialization." *Police Quarterly* 17 (4): 414-447.

Corsaro, N., and Engel, R. 2015. "Most Challenging of Contexts: Assessing the Impact of Focussed Deterrence on Serious Violence in New Orleans." *Criminology and Public Policy* 14 (3): 471-506.

Corsaro, N., Frank, J., and Ozer, M. 2015. "Perceptions of Police Practice, Cynicism of Police Performance and Persistent Neighbourhood Violence: An Intersecting Relationship." *Journal of Criminal Justice* 43: 1-11.

Data Collection Resource Centre. 2011. Background and Current Data Collection Efforts.

Davis, D. 2015. "For Ferguson and Nation: Justice and Education via Anti-Bias Reform." *Western Journal of Black Studies* 39 (4): 330-332.

Denzin, N. K., Lincoln, Y. S., and Giardina, M. D. 2006. "Disciplining Qualitative Research." *International Journal of Qualitative Studies in Education* 19 (6): 769.

Doob, A., and Gartner, R. 2017. *Understanding the Impact of Police Stops: A Report Prepared for the Toronto Police Services Board*. Toronto: Toronto Police Services Board.

Robin Doolittle. 2009. "Racial bias exists on police force, chief says," *Toronto Star*, (30 September 2009), online: www.thestar.com/news/gta/2009/09/30/racial_bias_exists_on_police_force_chief_says.html.

Donahue, R. 2019. "Shades of Blue: A review of the hiring, recruitment and selecting of female and minority police officers." *The Social Science Journal*: 1–13.

Durlauf, S., and Nagin, D. 2011. "Imprisonment and Crime: Can both be reduced?" *Criminology and Public Policy* 10 (1): 13–54.

Eid, P., Magloire, J., and Turenne, M. 2011. *Racial Profiling and Systemic Discrimination of Racialized Youth: Report of the Consultation on Racial Profiling and its Consequences*. Montreal: Commission des Droits de la Personne et des Droits de la Jeunesse.

Engel, R. 2005. "Citizens' Perceptions of Distributive Justice and Procedural Injustice During Traffic Stops with Police." *Journal of Research on Crime and Delinquency* 42 (4): 445-481.

Environics Institute. 2017. *The Black Experience Project in the GTA: Overview Report*. Toronto: Environics.

Fagan, J., and Davies, G. 2000. "Street Stops and Broken Windows: Terry, Race and Disorder in New York City." *Fordham Urban Law Journal* 28: 457-504.

Fearon, G., and Farrell, C. 2019. *Perceptions of the Toronto Police and Impact of Rule Changes Under Regulation 58/16: A Community Survey*. Toronto: Toronto Police Services Board.

Feeley, M., and Simon, J. 1992. "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications." *Criminology* 30: 449-474.

Fitzgerald, R., and Carrington, P. 2011. "Disproportionate Minority Contact in Canada: Police and Visible Minority Youth." *Canadian Journal of Criminology and Criminal Justice* 53 (4): 449-486.

Foster, H., and Hagan, J. 2009. "The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children and Prisoner Re-entry." *The Annals of the American Academy of Political and Social Science* 623: 179-194.

Foster, L., Jacobs, L., and Siu, B. 2016. *Race Data and Traffic Stops in Ottawa, 2013-2015:*

A Report on Ottawa and the Police Districts. Ottawa: Ottawa Police Service https://www.ottawapolice.ca/en/about-us/resources/.TSRDCP_York_Research_Report.pdf.

Fox, Chris. 2020. "Next Toronto police chief must have 'sensitivity to anti-Black racism,' mayor says," *CTV News* (27 June), online: https://toronto.ctvnews.ca/next-toronto-police-chief-must-have-sensitivity-to-anti-black-racism-mayor-says-1.5002615.

Fridell, L. 2004. *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*. Washington, D.C.: Police Executive Research Forum.

Fridell, L. 2017. *Producing Bias-Free Policing: A Science-based Approach*. New York, NY: Springer.

Gabbidon, S., and Greene, H. T. 2005. *Race and Crime*. Thousand Oaks, CA: Sage.

Gabbidon, S., and Higgins, G. 2009. "The Role of Race/Ethnicity and Race Relations on Public Opinion Related to the Treatment of Blacks by the Police." *Police Quarterly* 12 (1): 102-115

Gabbidon, S., Higgins, G., and Potter, H. 2011. "Race, Gender, and the Perception of Recently Experiencing Unfair Treatment by the Police: Exploratory Results from an All-Black Sample." *Criminal Justice Review* 36 (1): 5-21.

Gau, J. 2012. "Consent Searches as a Threat to Procedural Justice and Police Legitimacy: An Analysis of Consent Searches During Traffic Stops." *Criminal Justice Policy* 24 (6): 759-777.

Gibson, C. L., Walker, S., Jennings, W. G., and Miller, J. M. 2010. "The Impact of Traffic Stops on Calling the Police for Help." *Criminal Justice Policy Review* 21 (2): 139-159.

Gizzi, Michael. 2011. "Pretexual stops, vehicle searches and crime control: An examination of strategies used on the frontline of the War on Drugs." *Criminal Justice Studies* 24 (2): 139–152.

Glaser, J. 2015. *Suspect Race: Causes and Consequences of Racial Profiling*. NY: Oxford University Press.

Groff, E. R., Ratcliffe, J. H., Haberman, C. P., Sorg, E. T., Joyce, N. M., and Taylor, R. B. 2015. "Does What the Police Do at Hot Spots Matter." *Criminology* 53 (1): 23-53.

Goodfield, K. 2020. "Trust has been broken: Toronto's interim police chief apologizes to Dafonte Miller, promises transparency." *CTV News* (6 August 2020), online: https://toronto.ctvnews.ca/trust-has-been-broken-toronto-s-interim-police-chief-apologizes-to-dafonte-miller-

promises-transparency-1.5053280.

Grewal, S. 2015. "Blacks Three Times More Likely to be Carded by Peel Police than Whites." *Toronto Star* (September 24).

Haag, Julius. 2021. *A qualitative examination of the impacts of police practices on racialized and marginalized young people in Toronto*. PhD, Dissertation. Centre for Criminology and Sociolegal Studies, University of Toronto.

Hagan, J., Shedd C., and Payne, M. 2005. "Race, Ethnicity, and Youth Perceptions of Criminal Injustice." *American Sociological Review* 70: 381-407.

Hammersley, M. 2008. "Troubles with Triangulation." *Advances in Mixed Methods Research: Theories and Applications* 52: 22–33.

Hart, J. L., Larsen A. M., Litton, S., and Sullivan, L. J. 2008. "Racial Profiling: At What Price." *Journal of Forensic Psychology Practice* 3 (2): 79–88.

Harris, D. 2002. *Profiles in Injustice: Why Racial Profiling Cannot Work*. New York: New Press.

Harris, D. 1997. "Driving while Black and all other traffic offences: The Supreme Court and pretextual traffic stops." *Journal of Criminal Law and Criminology* 87 (2): 544–582.

Hayle, S., Wortley, S., and Tanner, J. 2016. "Profiling the Street: Race and Police Stop and Search Activities Among Toronto Youth." *Canadian Journal of Criminology and Criminal Justice* 58 (3): 322–353.

Henry, F. and Tator, C. 2005. *The Colour of Democracy: Racism in Canadian Society.* Toronto: Nelson.

Higgins, G., Gabbidon, S., and Vito, G. 2010. "Exploring the Influence of Race Relations and Public Safety Concerns on Public Support for Racial Profiling During Traffic Stops." *International Journal of Police Science and Management* 12 (1): 12–22.

Higgins, G., Gabbidon, S., and Jordan, K. 2008. "Examining the Generality of Citizens' Views on Racial Profiling in Diverse Situational Contexts." *Criminal Justice and Behaviour* 35 (12): 1527–1541.

Hoffman, K., White, P., and Webb, D. "Carding across Canada: Data show practice of Street Checks' lacks mandated set of procedures." *Globe and Mail* (August 17).

Ioimo, R., Tears, R., Meadows, L., Becton, B., and Charles, M. 2007. "The Police View of Bias-Based Policing." *Police Quarterly* 10 (3): 270-287.

Intravia, J., Wolff, K. T., Stewart, E. A., and Simons, R. L. 2014. "Neighbourhood-level differences in police discrimination and subcultural violence: a multilevel examination of adopting the code of the street." *Journal of Crime and Justice* 37 (1): 42-60.

James, K., Bunch, J., and Clay-Warner, J. 2015. "Perceived Injustice and School Violence: An Application of General Strain Theory." *Youth Violence and Juvenile Justice* 13 (2): 169-189.

James, C. 1998. "Up to No Good: Black on the Streets and Encountering Police." Pp. 157-176 in Vic Satzewich (Ed.). *Racism and Social Inequality in Canada: Concepts, Controversies and Strategies of Resistance.* Toronto: Thompson.

James, R. 2005. "New Chief, New Hope: Blair Offers an Honest Take." *The Toronto Star,* April 8: B01.

Jones-Brown, D. 2000. "Debunking the Myth of Officer Friendly: How African American Males Experience Community Policing." *Journal of Contemporary Criminal Justice* 16: 209-229.

Jones-Brown, D, Gill, J., and Trone, J. 2010. *Stop, Question and Frisk Policing Practices in New York City: A Primer*. New York: John Jay College Center on Race, Crime and Justice.

Kane, R. 2007. "Collect and Release Data on Coercive Police Actions." *Criminology and Public Policy* 6(4): 773-780.

Kane, R. 2005. "Compromised Police Legitimacy as a Predictor of Violent Crime in Structurally Disadvantaged Communities." *Criminology* 43: 469-498.

Kwon, J., and Wortley, S. 2020. "Policing the Police: Public Perceptions of Civilian Oversight in Canada." *Race and Justice*: 1-25.

Land, K. 2015. "Something that works in Violent Crime Control: Let the Focused Deterrence and Pulling Levers Programs Roll with Eternal Vigilance." *Criminology and Public Policy* 14 (3): 515-520.

Legal Aid Ontario. 2016. *Racialization of Carding and Street Checks*. Toronto: Legal Aid Ontario.

Lundman, R. and Kaufman, R. 2003. "Driving While Black: Effects of Race, Ethnicity and Gender on Citizen Self-Reports of Traffic Stops and Police Actions." *Criminology* 41 (1): 195-220.

Lurigio, A., Greenleaf, R., and Flexon, J. 2009. "The Effects of Race on Relationships with the Police: A Survey of African American and Latino Youths in Chicago." *Western Criminological Review* 10 (1): 29-41.

MacDonald, J., Stokes, R., Ridgeway, G., and Riley, J. 2007. "Race, Neighbourhood Context and Perceptions of Injustice by the Police in Cincinnati." *Urban Studies* 44 (13): 2567-2585.

Mann, C. R. 1993. *Unequal Justice: A Question of Color*. Bloomington: Indiana University Press.

Marshall, L. 2017. *Racial Disparities in Police Stops in Kingston, Ontario: Democratic Racism and Canadian Racial Profiling in Theoretical Perspective*. Doctoral Dissertation: Centre for Criminology and Sociolegal Studies, University of Toronto.

Mauer, Marc. 1999. *Race to Incarcerate*. New York: The New Press.

Martin, M. J., McCarthy, B., Conger, R. D., Gibbons, F. X., Simons, R. L., Cutrona, C. E., and Brody, G. H. 2010. "The Enduring significance of racism: discrimination and delinquency among black American youth." *Journal of Research on Adolescence* 21 (3): 662-676.

McMurtry, R., and Curling, A. 2008a. *The Review of the Roots of Youth Violence (Volume One): Findings, Analysis and Conclusions*. Toronto: Government of Ontario – Service Ontario Publications.

McMurtry, R., and Curling, A. 2008b. *The Review of the Roots of Youth Violence (Volume Three): Community Perspectives Report*. Toronto: Government of Ontario – Service Ontario Publications.

Meares, T. 2014. "The law and social science of stop and frisk." *Annual Review of Law and Social Science* 10: 335-352.

Meehan, A., and Ponder, M. 2002. "Race and Place: The Ecology of Racial Profiling African American Motorists." *Justice Quarterly* 19: 14-55.

Melchers, R. 2006. *Inequality Before the Law: The Canadian Experience of Racial Profiling*. Ottawa: RCMP Research and Evaluation Branch.

Meng, Y. 2017. "Profiling Minorities: Police Stop and Search Practices in Toronto Canada." *Human Geographies – Journal of Studies and Research on Human Geography* 11 (1): 6-22.

Miller, J., Quinton, P., Alexandrou, B., and Packham, D. 2020. "Can police training reduce ethnic/racial disparities in stop and search? Evidence from a multi-site UK trial." *Criminology and Public Policy* 19 (4): 1259-1287.

Miller, J. 2010. "Stop and Search in England: A Reformed Tactic or Business as Usual*?" British Journal of Criminology* 50 (5): 954-974.

Miles-Johnson, T. 2019. "Policing diverse people: How occupational attitudes and background characteristics shape police recruits' perceptions." *Sage Open*: 1-13.

Moon, S., Morgan, T., and Sandage, S. 2018. "The need for intercultural competence assessment and training among police officers." *Journal of Forensics Psychology Research and Practice* 18 (5): 337-351.

Marin, A. 2010. *Oversight Unseen: Investigation into the Special Investigations Unit's Operational Effectiveness and Credibility*. Toronto: Ombudsman on Ontario.

Mosher, C. 1998. *Discrimination and Denial: Systemic Racism in Ontario's Legal and Criminal Justice Systems: 1892-1961*. Toronto: University of Toronto Press.

Murakawa, N., and Beckett, K. 2010. "The Penology of Racial Innocence: The Erasure

of Racism in the Study and Practice of Punishment." *Law and Society* 44 (3/4): 695-730.

Myhill, A., and Beak, K. 2008. *Public Confidence in the Police.* London, UK: NPIA Research, Analysis and Information.

Neugebauer-Visano, R. 2000. "Kids, Cops, and Colour: The Social Organization of Police-minority Youth Relations." Pp. 46-59 in R. Neugebauer (Ed.). *Criminal injustice: Racism in the Criminal Justice System*. Toronto: Canadian Scholars Press.

Nichols, N. (2018). "The Social Organization of Access to Justice for Youth in "Unsafe" Urban Neighbourhoods." *Social & Legal Studies*, *27*(1), 79–96.

Nicholson-Crotty, J., Nicholson-Crotty, S., and Li, D. 2019. "Recruit screening, representation and the moral hazard problem in policing." *Public Performance and Management Review* 42 (2): 483-503.

Nobles, M. 2010. "Using Geographic Information Systems to Study Race, Crime and Policing." Pp. 205-221 in S. Rice and M. White (Eds.) *Race, Ethnicity and Policing: New and Essential Readings*. New York: New York University Press.

Nolan, T. 2020. *Perilous Policing: Criminal Justice in Marginalized Communities*. New York: Routledge.

O'Brien, J. 2016. "Carding: London Police Chief Vows Street Checks Will Continue under New Rules, Asks for Public Trust." *London Free Press* (November 23).

O'Conner, C. 2008. "Citizen Attitudes Towards the Police in Canada." *Policing: An International Journal of Policing Strategies and Management* 31 (4): 578-595.

Ontario Human Rights Commission. 2003. *Paying the Price: The Human Cost of Racial Profiling*. Toronto: Ontario Human Rights Commission.

Ontario Human Rights Commission. 2016. *OHRC Response to the Race Data and Traffic Stops in Ottawa Report*. Toronto: Ontario Human Rights Commission.

Ontario Human Rights Commission. 2017. *Under Suspicion: Research and consultation report on racial profiling in Ontario.* Toronto: Ontario Human Rights Commission.

Owusu-Bempah, A. 2015. *Black Males' Perceptions of and Experiences with the Police in Toronto.* Doctoral Dissertation. Centre for Criminology and Socio-legal Studies, University

of Toronto.

PACER. 2014. *The Police Community Engagement Review: Final Report*. Toronto: Toronto Police Service.

Pager, D., Western, B., and Sugie, N. 2009. "Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records." *The Annals of the American Academy of Political and Social Science* 623: 195-213.

Paradies, Y., Ben, J., Denson, N., Elias, A., Priest, N., Pieterse, A., Gupta, A., Kelaher M., and Gee, G. 2015. "Racism as a Determinant of Health: A Systemic Review and Meta-Analysis." *PLos One* 10: 1-48.

Parker, K., Lane, E., and Alpert, G. 2010. "Community Characteristics and Police Search Rates: Accounting for the Ethnic Diversity of Urban Areas in the Study of Black, White and Hispanic Searches." Pp. 309-348 in Rice, S., and White, M. (Eds.) *Race, Ethnicity and Policing: New and Essential Readings*. New York: New York University Press.

Paulhamus, M., Kane, R., and Piquero, A. 2010. "State of the Science in Racial Profiling Research: Substantive and Methodological Considerations." Pp. 239-258 in

Rice, S., and White, M. (Eds.) *Race, Ethnicity and Policing: New and Essential Readings*. New York: New York University Press.

Penner, E. K., Viljoen, J. L., Douglas, K. S., and Roesch, R. 2014. "Procedural Justice Versus Risk Factors for offending. Predicting Recidivism in Youth." *Law and Human Behaviour* 38 (3): 225-237.

Perry, B. 2011. *Diversity, Crime and Justice in Canada.* New York: Oxford University Press: 127-150.

Pieterse, A., Todd, N., Neville, H., and Carter, R. 2012. "Perceived Racism and Mental Health Among Black American Adults: A Meta-Analytic Review." *Journal of Counselling Psychology* 59 (1): 1-9.

Pinard, M. 2010. "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity." *New York University Law Review* 85: 457-534.

Price, N. 2014. *'This Issue has been With Us for Ages': A Community-based Assessment of Police Contact Carding in 31 Division (Final Report)*. Toronto: Toronto Police Services Board and Logical Outcomes.

Ramirez, D., Hoopes, J., and Quinlan T. 2003. "Defining Racial Profiling in a Post-September 11 World." *American Criminal Law Review* 40: 1195-1235.

Rankin, J. 2016. "Award-Winning Law Student Denied Cop Ride-Along Despite No Criminal Record." *Toronto Star* (June 28).

Rankin, J., Winsa, P., Bailey, A., and Ng, H. 2014. "Carding Drops but Proportion of Blacks Stopped by Police Rises." *Toronto Star*, July: A1.

Rankin, J., and Winsa, P. 2012. "Known to Police: Toronto police stop and document Black and Brown people far more than Whites." *Toronto Star*, March: A1.

Rankin, J. 2010a. "Race Matters: When Good People are Swept Up With the Bad." *Toronto Star,* February 6: A1.

Rankin, J. 2010b. "CARDED: Probing a Racial Disparity." *Toronto Star*, February 6: IN1.

Reitzel, J., and Piquero, A. 2006. "Does it Exist? Studying Citizens' Attitudes of Racial Profiling." *Police Quarterly* 9 (2): 161-183.

Rice, S., and White, M. 2010. *Race, Ethnicity and Policing: New and Essential Readings*. New York: New York University Press.

Riley, J., Cassidy, D., and Becker, J. 2009. *Statistics on Race and the Criminal Justice System*. London, England: Ministry of Justice.

Rosenbaum, D., and Lawrence, D. 2017. "Teaching procedural justice and communication skills during police-community encounters: Results of a randomized control trial with police recruits." *Journal of Experimental Criminology* 13 (3): 293-319.

Rosenbaum, D., Schuck, A., Costello, S., Hawkins, D., and Ring, M. 2005. "Attitudes Towards the Police: The Effects of Direct and Vicarious Experience." *Police Quarterly* 8 (3): 343-365.

Rosenfeld, R., and Fornango, R. 2012. "The Impact of Police Stops on Precinct Robbery and Burglary Rates in New York City, 2003-2010." Justice Quarterly 37 (1): 96-122.

Rushin, Stephen and Griffin Edwards. 2021. "An empirical analysis of pretextual stops and racial profiling." *Stanford Law Review* 73: 637–670.

Schuman, H., Steeh, C., Bobo, L., and Krysan, M. 1997. *Racial Attitudes in America: Trends*

and Interpretations. Cambridge: Harvard University Press.

Sewell, J. 2010. *Police in Canada: The Real Story*. Toronto: James Lorimer and Company.

Sherman, L. 1993. "Defiance, Deterrence and Irrelevance: A Theory of Criminal Sanction." *Journal of Research on Crime and Delinquency* 30: 123-135.

Skogan, W. 2005. "Citizen Satisfaction with Police Encounters." *Police Quarterly* 8 (3): 298-321.

Skogan, W. 2006. "Asymmetry in the Impact of Encounters with the Police." *Policing and Society* 16: 99-126.

Skolnick, J. 1966. *Justice without Trial: Law Enforcement in a Democratic Society*. New York: John Wiley and Sons.

Slocum, L. A., Taylor, T. J., Brick, B. T., and Esbensen, F. 2010. "Neighbourhood Structural Characteristics, Individual-Level Attitudes, and Youths' Crime Reporting Intentions." *Criminology* 48 (4): 1063-1100.

Sprott, J., and Doob, A. 2014. "Confidence in the Police: Variation Across Groups Classified as Visible Minorities." *Canadian Journal of Criminology and Criminal Justice,* 56 (3): 367-379.

Stenning, P. 2003. "Policing the Cultural Kaleidoscope: Recent Canadian Experience." *Police & Society* 7: 21-87.

Stewart, E. 2007. "Either they Don't Know or they Don't Care: Black Males and Negative Police Experiences." *Criminology and Public Policy* 6 (1): 123-130.

Tanovich, D. 2006. *The Colour of Justice: Policing Race in Canada*. Toronto: Irwin Law.

Tator, C., and Henry, F. 2006. *Racial Profiling in Canada: Challenging the Myth of a Few Bad Apples*. Toronto: University of Toronto Press.

Thomas, M., and Burns, P. 2019. "Repairing the divide: An investigation of community policing and citizen attitudes towards the police by race and ethnicity." *Journal of Ethnicity in Criminal Justice* 3 (1): 71-90.

Tillyer, R., Engel, R., and Cherkauskas, J. 2010. "Best Practices in Vehicle Stop Data Collection and Analysis." *Policing: An International Journal of Police Strategies and Management* 33 (1): 69-92.

Tomaskovic-Devey, D., Mason, M., and Zingraff, M. 2004. "Looking for the Driving While Black Phenomena: Conceptualizing Racial Bias Processes and their Associated Distributions." *Police Quarterly* 7 (1): 3-29.

Tonry, M. 1995. *Malign Neglect: Race, Crime and Punishment in America*. New York: Oxford University Press.

Tonry, M. 2011. "Less imprisonment is no doubt a good thing: More policing is not." *Criminology and Public Policy* 10 (1): 137-152.

Torres, J. 2015. "Race/Ethnicity and Stop and Frisk: Past, Present and Future." *Sociology SCompass* 9 (11): 931-939.

Toronto Police Service. 2016. *TPS Procedure 04-14 Regulated Interactions* (December 30).

Toronto Police Services Board. 2016. *TPSB Policy on Regulated Interactions with the Community and the Collection of Identifying Information* (November 17).

Toronto Police Services Board. 2019. *TPSB Policy on race-based data collection, analysis and public reporting* (September 19)

Toronto Police Services Board. 2020. *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (August 18)

Tulloch, M. 2019. *Report of the Independent Street Checks Review*. Toronto: Queen's Printer for Ontario.

Tyler, T. 2006. *Why People Obey the Law*. Princeton, NJ: Princeton University Press.

Tyler, T. 2005. "Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police." *Police Quarterly* 8 (3): 322-342.

Tyler, T., and Fagan, J. 2008. "Legitimacy and Cooperation: Why do People Help the Police Fight Crime in Their Communities." *Ohio State Journal of Criminal Law* 6: 231-275.

Tyler, T., and Wakslak, C. 2004. "Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive and Acceptance of Police Authority." *Criminology* 42: 253-281.

Walby, K. 2021. "SWAT Everywhere? A Response to Jenkins, Semple, Bennell and Huey."

The Police Journal: Theory, Practice and Principles: 1-7.

Walker, B. 2010. *Race on Trial: Black Defendants in Ontario's Criminal Courts 1858-1958*. Toronto: University of Toronto Press.

Walker, S., Spohn, C., and Delone, M. 2004. *The Color of Justice: Race, Ethnicity and Crime in America.* Toronto: Wadsworth.

Walsh, D., and Conway, V. 2011. "Police governance and accountability: Overview of current issues." *Crime, Law and Social Change* 55 (2): 61-86.

Warren, P., and Tomaskovic-Devey, D. 2009. "Racial Profiling and Searches: Did the Politics of Racial Profiling Change Police Behaviour." *Criminology and Public Policy* 8 (2): 343-369.

Warren, P. 2011. "Perceptions of Police Disrespect During Vehicle Stops: A Race-Based Analysis." *Crime and Delinquency* 57 (3): 356-376.

Watts, V. 2014. "Institutional Racism Still has Major Impact on African American Mental Health." *Psychiatric News* 49 (34): 1-3.

Weisburd, D., Wooditch, A., Weisburd, S., and Yang, S. 2015. "Do Stop, Question and Frisk Practices Deter Crime." *Criminology and Public Policy* 15 (1): 31-46.

Wegman, J. 2015. "Ray Kelly's Sour Grapes." *New York Times*, December 24.

Western, B., and Wildeman, C. 2009. "The Black Family and Mass Incarceration." *The Annals of the American Academy of Political and Social Science* 621: 179-194.

Weitzer, R., and Tuch, S. 2006. *Race and Policing in America: Conflict and Reform*. New York: Cambridge University Press.

Weitzer, R., and Tuch, S. 2005. "Racially Biased Policing: Determinants of Citizen Perceptions." *Social Forces* 83: 1009-1030.

Weitzer, R., and Tuch, S. 2002. "Perceptions of Racial Profiling: Race, Class, and Personal Experience." *Criminology 40* (2): 435-456.

Weitzer, R., Tuch, S., and Skogan, W. 2008. "Police-Community Relations in a Majority Black City." *Journal of Research on Crime and Delinquency* 45 (4): 398-428.

White, M., and Fradella, H. 2016. *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic*. New York, NY: NYU Press.

Wilbanks, W. 1987. *The Myth of a Racist Criminal Justice System*. Belmont, CA: Wadsworth.

Williams, C. 2006. "Obscurantism in Action: How the Ontario Human Rights Commission Frames Racial Profiling." *Canadian Ethnic Studies* 38 (2): 1–18.

Samuels-Wortley, K. 2021. "To serve and protect whom? Using composite counter-storytelling to explore Black and Indigenous youth experiences and perceptions of the police in Canada." *Crime and Delinquency,* Vol 67(8), pg. 1137-1164. https://doi.org/10.1177/0011128721989077.

Samuels-Wortley, K. 2021. *The weight of fitting the description. Using Critical Race Theory to explore Black and Indigenous youth perceptions of the police*. Doctoral Dissertation, Department of Sociology, University of Waterloo.

Wortley, S. 2019a. *Halifax, Nova Scotia: Street Check Report. Halifax, Nova Scotia Human Rights Commission.* https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf.

Wortley, S. 2019b. *Appendix A: Street Checks, Racial Profiling and Police Community Relations:*

A Review of the International and Canadian Literature. Halifax, Nova Scotia Human Rights Commission. https://humanrights.novascotia.ca/streetchecks.

Wortley, S. 2006. *Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit – Final Report*. Toronto: Attorney General of Ontario (Ipperwash Inquiry), Governmnent of Ontario.

Wortley, S. 1996. "Justice for All? Race and Perceptions of Bias in the Ontario Criminal Justice System – A Toronto Survey." *Canadian Journal of Criminology and Criminal Justice* 38 (4): 439-467.

Wortley, S., Laniyonu, A., and Laming, E. 2020. *Race and the Use of Lethal and Non-Lethal Force by the Toronto Police Service: Final Report*. Toronto: Ontario Human Rights Commission (187 pages; Not listed in previous activity reports).

Wortley, S., and Jung, M. 2020. *Documenting Racial Disparity: An Analysis of Arrest and Charge Data from the Toronto Police Service*. Toronto: Ontario Human Rights Commission (148 pages; Not listed in previous activity reports).

Wortley, S., and Owusu-Bempah, A. 2020. *Race and Criminal Injustice: An Examination of Public Perceptions of and Experiences with the Criminal Justice System Among Residents of the Greater Toronto Area*. Toronto: Canadian Association of Black Lawyers.

Wortley, S., Bundy, J., Tanner, J., and Lodge-Tulloch, K. 2019. "Race, Street Checks and Perceptions of Police Among Disadvantaged Toronto Youth." *Paper presented at the Western Criminology Association Annual Meeting, Honolulu*.

Wortley, S., Macmillan, R., and Hagan, J. 1997. "Just Des(s)erts? The Racial

Polarization of Perceptions of Criminal Injustice." *Law and Society Review* 31: 637-676.

Wortley, S., and Owusu-Bempah, A. 2011a. "Crime and Justice: The Experiences of Black Canadians." In Barbara Perry (Ed.) *Diversity, Crime and Justice in Canada.* New York: Oxford University Press: 127-150.

Wortley, S., and Owusu-Bempah, A. 2011b. "The Usual Suspects: Police Stop and Search Practices in Canada." *Policing and Society 21* (4):395-407.

Wortley, S., and Owusu-Bempah, A. 2009. "Unequal Before the Law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice System. "*Journal of International Migration and Integration* 10: 447-473.

Wortley, S., and Tanner, J. 2008. "Money, Respect and Defiance: Justifying Gang Membership in a Canadian City." Pp. 192-210 in Frank van Gemert, Dana Peterson and Inger-Lise Lien (Eds) *Youth Gangs, Migration and Ethnicity*. London: Willan Publishing.

Wortley, S., and McCalla, A. 2008. "Racial Discrimination in the Ontario Criminal Justice System: 1994-2007." Pp. 187-207 in Julian Roberts and Michelle Grossman (Eds.) *Criminal Justice in Canada: A Reader – 3rd Edition*. Toronto: Thomson-Nelson.

Wortley, S., and Tanner, J. 2005. "Inflammatory Rhetoric? Baseless Accusations? Responding to Gabor's Critique of Racial Profiling Research in Canada." *Canadian Journal of Criminology and Criminal Justice* 47 (3): 581-609.

Wortley, S., and Tanner, J. 2003. "Data, Denials and Confusion: The Racial Profiling Debate in Toronto." *Canadian Journal of Criminology and Criminal Justice* 45 (3): 367-389.

Wortley, S., and Kellough, G. 2004. "Racializing Risk: Police and Crown Discretion and the Over-representation of Black People in the Ontario Criminal Justice System." Pp. 173-205 in Harriott, A., Brathwaite, F., and Wortley, S. (Eds.), *Crime and Criminal Justice in the Caribbean and Among Caribbean Peoples*. Kingston, Jamaica: Arawak Publications.

Wortley, S., and Marshall, L. 2005. *The Kingston Police Stop Pilot Project: Final Results*. Kingston: Kingston Police Services Board.

Yogaretnam, S. 2015. "Street Check Data About Racialized Men Concerning to Civil Liberties Advocates." *Ottawa Citizen* (July 26).

Zimring, F. 2012. *The City that Became Safe: New York's Lessons for Urban Crime and Its Control*. New York, NY: Oxford University Press.

Zhao, J., Lai, Y., Ren, L., and Lawton, B. 2011. "The Impact of Race/Ethnicity and Quality of Life Policing on Attitudes Towards Racially Biased Policing and Traffic Stops." *Crime and Delinquency* 6 (3): 350-374.

Zatz, M., and Krecker, R. 2003. "Anti-gang Initiatives as Racialized Policy." In Hawkins, D., Myers, S., and Stone, R. (Eds.), *Crime Control and Social Justice: The Delicate Balance*. Westport, CN: Greenwood Press.

Zimny, K. 2015. "Racial attitudes of police recruits at the United States Midwest Police Academy: A second examination." *International Journal of Criminal Justice Sciences* 10 (1): 91-101.

Endnotes

[1] It should be stressed that the focus of this report is research involving the Toronto Police Service. For a review of other Canadian and international research on racial profiling and racially biased policing, please see (Wortley 2019).

[2] The police practice of recording civilian personal information – during non-criminal encounters – for intelligence purposes has had many names. The term "carding" stems from the use of "contact cards" or "208 cards" for recoding civilian information during incidents that did not result in an arrest or charge. Over the years this practice has been rebranded as "field information reports," "street checks" and most recently "regulated interactions." Thus, the original definition of the term "carding" is very similar to the definition given field information reports and street checks. However, Justice Tulloch redefined "carding" to mean interactions that were random or arbitrary and not all incidents in which the police collected personal information.

[3] It is also important to note that racial profiling can exist – even if officers decide not to record stop, question and search (SQS) incidents for intelligence purposes. Undocumented SQS incidents still have an impact on individuals and communities.

[4] Although racial animus has declined in North America, it has not been eliminated. In fact, research suggests that people with overtly racist views and/or feelings of racial animus are much more likely to support tough criminal justice policies (see Brewer et al. 2008). Others have argued that overt racism has not declined as significantly as research findings suggest. These critics maintain that, because of cultural change, racists are just less likely to publically express their views (see Murakawa and Becket 2010; Henry and Tator 2005).

[5] Indeed, the tendency for police officers to view allegations of racial profiling as an accusation of overt racism has led some researchers to call for a change in the language used to frame the issue. Some scholars, for example, have called for researchers to replace the term "racial profiling" with the term "disproportionate stops" because it takes attention away from officers' intent and puts the focus on the data and community impact (see Paulhamus et al. 2010: 249).

[6] Proactive policing refers to police surveillance or investigative behaviours – including police stop and search activities – in which police officers actively search for criminal or traffic violations, suspicious persons, or suspicious activities. By contrast, reactive policing involves police responses to specific calls for service.

[7] Research does suggest that the residents of high-crime communities are more likely to be stopped and searched than the residents of low-crime communities. However, additional analysis reveals that, within high-crime communities, racialized residents are more likely to be stopped and searched by the police than White residents (see Wortley and Owusu-Bempah 2011).

[8] It is important to note that the police deployment model cannot adequately explain research findings which suggest that racialized civilians are even more likely to be stopped and searched by the police when they reside in, or travel through, high-income, low-crime, predominantly White communities (see Meehan and Ponder 2002).

[9] See Wortley 2019a and 2019b for a detailed review of racial profiling research in the international context. This review, conducted as part of an inquiry into racially biased policing in Halifax, Nova Scotia, examines British, American and Canadian research. It further discusses the relative strengths and weaknesses of the five major research methodologies that have explored this issue.

[10] All of the racial differences highlighted in this section of the text are significant at the p >.01 level.

[11] A recent re-analysis of the 2000 study compared results from the high school sample with the results from a sample of over 300 Toronto-area street youth (see Hayle, Wortley and Tanner 2016). The results, once again, reveal that Black high school students are much more likely to be stopped and searched by the police than students from other racial backgrounds – even after controlling for other variables

including involvement in crime and gangs. The findings further indicate that racial differences are largest amongst students with low levels of criminal involvement and smallest among people deeply immersed in deviant lifestyles. Interestingly, racial differences in exposure to police stop and search activity did not reach statistical significance among homeless street youth. This lack of racial difference was, however, explained by the fact that all street youth reported extremely high levels of criminal involvement and spent a great deal of their time in public spaces. Involvement in such deviant lifestyles likely drew the legitimate attention of the police. Once again, however, the results confirmed that racial profiling is most likely to manifest itself among populations with low levels of criminal activity. It seems that good behaviour protects White people from being investigated by the police more than it protects Black people: that being Black, in and of itself, attracts police attention.

[12] Survey research has also been used to document the experiences and opinions of American police officers. For example, a recent survey of the police in Virginia found that 26% of officers believe that racially biased policing is a common practice and that this opinion is more widely held by Black than White officers (Ioimo et al. 2007). Similarly, a sample of Black police officers in Wisconsin found that the majority of respondents believed they had been the victim of racial profiling at some time in their life (see Barlow and Barlow 2002).

[13] All of the gender differences documented in Figure 1 are statistically significant at the p >.01 level.

[14] It should be noted that the Black Experience Project Survey has certain limitations. First of all, since it only includes respondents who self-identified as Black, the survey is not able to compare the opinions and experiences of Black people with the opinions and experiences of people from other racial backgrounds. Furthermore, with respect to police stops, the survey only asked about lifetime experiences. It did not ask about police stops that occurred over the past year. Thus, we are unable to determine the extent to which young people, particularly young Black males, are subject to police surveillance activities. Nonetheless, the results of this survey are consistent with the results of other surveys that were able to include a more nuanced analysis. In sum, the results of this survey further highlight the consistency of findings across different data sources. Black people are disproportionately impacted by police stop, question and search activities.

[15] Between 2008 and November 2013, the Toronto Police Service completed 2,026,258 contact cards or field information reports. However, information on the race of civilian was missing in 179,328 cases (about 9% of the sample). These cases are left out of the current analysis.

[16] Data from the 2006 Census were used to conduct the current analysis. The 2011 Census was replaced by a non-mandatory household survey that has been criticized for producing inaccurate population estimates. However, it should be stressed that using figures from the 2016 Census produces very similar racial disparities.

[17] It should be stressed that the number of street checks involving Black people might be under-estimated. There is evidence, for example, to suggest that lighter-skinned people, who self-identify as Black, were sometimes labelled Brown by TPS officers. Skin colour determinations also varied from officer to officer. For example, during one street check an officer might identify an individual

as Black. However, they might be labelled Brown by another officer during a subsequent encounter. Furthermore, our analysis reveals that Somalian individuals, who typically self-identify as Black, were often labelled Brown by TPS officers.

[18] 55.5% of all stops were for general investigation, 16.4% were traffic-related, 5.3% were vehicle-related and 3.7% were conducted for loitering. In fact, general investigations, traffic-related stops, vehicle-related stops and loitering stops accounted for 81% of all completed contact cards in the 2008 dataset. All other reasons accounted for only 19% of recorded stops.

[19] As discussed above, Black people were 8% of Toronto's population in 2008, but represented 24% of all contact card stops and 24% of all stops conducted for purposes of general investigation. Black people were also grossly over-represented in traffic-related stops (27%), loitering stops (30%), drug-related stops (26%), trespassing-related stops (28%), suspicious activity stops (25%), bail compliance stops (45.9%), gun-related stops (48.7%) and stops related to possible street gang activity (62.1%). By contrast, White people represent over 90% of stops related to biker gangs. However, it should be stressed that only 182 of the 289,413 stops recorded in the 2008 dataset (0.06%) involved suspected biker gang activity.

[20] While the 1994 and 2007 surveys focused on Toronto residents only, the 2019 survey included residents from the entire Greater Toronto Area (City of Toronto, Peel Region, Durham Region, Halton Region and York Region).

[21] Please see Wortley 2019b for a more detailed review of the international literature on police racial profiling. This document includes a review of traffic stop data and various benchmarking techniques that have been used to document racial disparities in police surveillance activities.

[22] Even though Black people represent only 23% of New York City's population, they were involved

in over half (52%) of the stops conducted by the NYPD over this period. By contrast, White people represent 10% of the NYC population, and were involved in 10% of police stops.

[23] It is of course ridiculous to suggest that all of the recent increases in homicides and gun crimes in Toronto can be simply attributed to the elimination of street checks. Criminologists acknowledge that crime is a highly complex phenomena, and that changes in criminal behaviour reflect a variety of social and economic factors in addition to policing practices. It should also be noted that the homicide numbers in Toronto dropped from 96 cases in 2018 to 65 cases in 2019 – despite the continued absence of street checks. The 2018 homicide numbers were also inflated by a single incident – the Yonge street van attack – which claimed 10 victims. It is highly unlikely that this attack would have been prevented by a street check.

[24] At least a high-quality evaluation that has been made available to the public.

[25] This was the case in Kingston, Ontario. Despite being a relatively small police service, the Kingston Police had for years collected contact cards for intelligence purposes. Thus, in order to conduct the Kingston stops pilot project, only small changes to the current contact card system – including the addition of a field to measure race – were required. Furthermore, during the pilot project, officers had to now fill out a contact card for all stops – not just those they felt were important for intelligence purposes.

[26] We also vehemently disagree with Melchers' (2006) argument that Canadian academics simply

do not possess the quantitative skills necessary to properly analyze data on police stop practices. Melchers seems to base these conclusions on a 1998 report (a report many academics disagreed with). First of all, since that time, universities have attempted to increase the quantitative training

of social science researchers. Secondly, over the past decade, many Canadians have received their training at American universities with a highly quantitative focus. Many of these individuals are

now working as professors in both Canadian and American universities. Finally, there are many quantitative American academics who would be more than willing to work with Canadian data

(as long as they could use such data for publication purposes).

[27] Unfortunately, some members of the public perceive that the views of private consultants can be swayed by financial considerations and the interests of their clients.

[28] Another option would be to only record information on all investigative or coercive stops – rather than all traffic stops made by the police. For example, since 1984, the police in England have had

to record information on all stops that involve a search – although they are currently moving to a system that will record all stops (Riley et al. 2009). As discussed above, a similar system has been established in New York City, where only stops that involve a frisk, search, use of force or detention are recorded (Jones-Brown 2010). As Fridell (2004) notes, the weakness of this approach is that it will not capture pretext stops (traffic stops that are really intended to investigate possible criminality).

[29] Even though African Americans represent only 23% of New York City's population, they were involved in over half (52%) of the stops conducted by the NYPD over this period. By contrast, although White people represent 10% of the NYC population, they were involved in only 10% of police stops.

Appendix 3 - Addendum Report: Additional Benchmarking Of TPS Use Of Force And Charge Data

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Introduction

This report is designed as an addendum to *A Disparate Impact*, published by the Ontario Human Rights Commissions as part of their inquiry into anti-Black racism within the Toronto Police Service. This addendum incorporates data that was not available during the preparation of *A Disparate Impact*.

- Part A of the addendum benchmarks police use of force incidents against race-based arrest and street check data;
- Part B presents a multivariate analysis, predicting use of force incidents, that incorporates racial differences in arrests and police contact;
- Part C of the report benchmarks "out-of-sight" traffic charges with estimates of Toronto's driving population;
- Part D of the report benchmarks failure to comply charges against TPS arrest statistics;
- Finally, we provide a methodological appendix that further explains the multivariate analyses conducted in the original use of force report. [1]

PART A: Additional Use of Force Benchmarking

Our original use of force report (Wortley, Laniyonu, and Laming 2020) documented that, compared to their presence in the general population, Black people are grossly over-represented in Toronto Police Service (TPS) use of force cases. Indeed, we found that Black people were over-represented in both use of force cases that resulted in civilian death or serious injury (as documented by SIU investigations), and lower-level use of force cases that did not result in an injury that would warrant SIU attention (as measured by an analysis of TPS Injury Reports and General Occurrence data).[2]

General population benchmarking captures the overall impact of police use of force on racialized communities. Proponents maintain that general population benchmarking reveals the likelihood that people from different racial backgrounds will experience police contact and/or a police use of force incident. A growing number of researchers recognize that census benchmarking is a valuable first step in the research process and that it serves to effectively document the extent to which different racial groups experience different types of police contact. For example, a recent Home Office study concluded that: "When they are based on a wide enough geographical area, statistics based on resident populations still give us an important indication of how often members of different ethnic communities are actually stopped and searched in that area" (MVA and Miller 2000: 84). Similarly, Riley and his colleagues (2009: 26-27) conclude that "comparisons based on the residential population remain important because they illustrate the experience of different ethnic groups irrespective of the reasons that may explain any disparities. Disproportionality is a critical issue for the police service because evidence shows that negative police practices can damage public confidence and because being stopped and searched has been linked with lower satisfaction levels with the police." Miller (2010) has also argued that census benchmarking is likely the best method for documenting racial disparities over time (see Miller 2010). The argument in favour of census benchmarking is also articulated by Benjamin Bowling and Coretta Phillips (2007). Following their review of different benchmarking strategies used within racial profiling research, these prominent British scholars concluded that:

> It is our view that the most robust measure of disproportionality in the use of police stop and search powers, and which relies on the fewest assumptions, is the per capita stop/search rate….The issue of availability provides no defence against the charge that routine practices are having a disproportionate impact on people from minority groups; thus prompting the Lawrence Inquiry label of 'institutional racism." The most important point is that the per capita rate provides, by definition, an estimate of the population group experience. Thus, in a large geographical context such as the London Metropolitan Police Area or England and Wales as a whole, statistics based on resident populations provide an important indicator of how often members of different ethnic communities are actually stopped and searched within that area. As Home Office researchers bluntly put it, per capita stop/search rates show clearly that being Black means that you are going to be stopped more often (Bowling and Phillips 2007: 952-953).

We strongly believe that the logic used to justify census benchmarking with respect to police stop and search activities can be applied to studies of police use of force. However, we also acknowledge that, while general population benchmarking may highlight the over-

representation or under-representation of racialized people in use of force statistics, these statistics may not completely explain racial disparities. In other words, general population benchmarking is not the only method that can be used to capture the "population at risk" of experiencing police use of force. It could be argued, for example, that racial groups with high levels of contact with the police are at greater risk of experiencing police violence than those with lower levels of contact. It could also be argued that those who have broken the law – and targeted for arrest – are at especially high risk of police use of force. Furthermore, it has been argued that violent offenders (i.e., those involved in arrests for violent crime) are more likely to demonstrate "resistance" to the police and are thus particularly vulnerable to police use of force incidents (see Tregle, Nix and Alpert 2019). With these arguments in mind, in this section we augment our original general population benchmarking with benchmarks that document racial differences with respect to both police contact (street checks) and arrests.

To the best of our knowledge, during the study period (January 1st, 2013 to June 30th, 2017), the TPS did not collect or disseminate data documenting racial differences in police contact. For example, the TPS did not release data documenting racial differences with respect to traffic stops, pedestrian stops, or calls for service. Thus, we decided to use TPS street check data, collected between 2008 and 2013, to estimate racial differences in police contact.[3]

During the development of our initial report, we did not have information on whether the TPS compiled or would be willing to release statistics on race and crime. However, following the release of *A Disparate Impact* the OHRC requested and received TPS data on the race of accused persons, arrested for various violent and non-violent offences, between 2014 and 2017.

The data provided in Table A1 reveal that Black people are significantly over-represented in TPS street checks and arrests. Although they represent only 8.8% of Toronto's general population (according to the 2016 Census), Black people were involved in 22.8% of all street checks, 24.8% of all arrests, 23.3% of arrests for property crime, 27.6% of arrests for violent crime, 38.6% of arrests for aggravated assault, 44.5% of homicide arrests, 42.3% of arrests for attempted homicide, and 51.6% of arrests for firearms-related offences.

It should be noted that arrests for serious violence are quite rare. For example, between 2014 and 2017, the TPS made 110,218 arrests. However, only 164 of these arrests (0.1%) were for homicide. Similarly, only 0.2% of all arrests were for attempted murder, 0.8% were for aggravated assault, and 2.2% were for firearms-related offences.

It is not the purpose of this addendum report to provide an in-depth explanation for the over-representation of Black people in arrest statistics. However, as discussed in our earlier report, most criminologists agree that it is likely a combination of both racial bias within the criminal justice system and higher rates of "street-level" offending (see Wortley and Jung 2020). Racial bias contributes to racial disparities in arrest statistics in several ways. To begin with, Black people often come under higher levels of police surveillance than White people. For example, numerous studies reveal that Black people are grossly over-represented in police stop and search activities. Biased police surveillance practices entail that Black and other racialized people are more likely to be caught for breaking the law – and subsequently arrested – than White people who engage in exactly the same behaviour. Research also indicates that, when illegal activity is identified, Black people are more likely to be charged with a crime than cautioned by the police or offered diversion programs.   As highlighted by Goff and his colleagues in their report entitled *The Science of Justice*:

> Unfortunately, there is no way to take a true measure of criminality within a population, and the nearest approximation is problematic. Arrest data, which provide the closest estimate of criminal activity within a population (short of direct observation), are compromised by the very nature of who makes arrests. That is, because police arrest people and our concern is with the possibility that police behave in a biased manner when applying force, there is the strong likelihood that arrest data would be biased in the same manner as use of force data. Benchmarking use of force data to arrest data likely underestimates the level of bias that may exist in police use of force (Goff et al. 2016: 5).

Nonetheless, we can't discount the possibility that some of the racial disparity with respect to use of force is related to racial differences in offending behaviour. As documented by Ontario's *Roots of Youth Violence Inquiry* (McMurtry and Curling 2008), higher rates of offending among Black and Indigenous peoples in Canada can be traced back to colonialism and the institution of slavery. These historical processes resulted in systemic racism, multi-generational trauma, and contemporary racial inequality. As a result, Black Canadians are more likely to live in disadvantaged communities and suffer from unemployment, poverty, limited social capital, social alienation, and hopelessness. A large volume of criminological research reveals that these factors are significantly related to criminal offending. It is also important to note that, although Black people may be statistically over-represented in some TPS crime categories – including gun violence – the vast majority of Black people are law abiding. Despite facing the perils of racism and inequality – most Black people are resilient and never break the law. This majority does not deserve to be profiled because of the actions of a small number of Black offenders. We will return to this issue at the conclusion of this section.

Measuring Black Representation in TPS Use of Force Incidents

Consistent with the strategy used in our previous reports, Odds Ratios were calculated, using different population benchmarks, to determine the representation of Black people in TPS use of force cases. Odds ratios were calculated by dividing the percentage of all use of force cases involving Black people by their percent representation within each benchmark. An Odds Ratio approaching 1.00 indicates that Black people are neither over-represented nor under-represented in use of force cases. An odds ratio less than 1.00 indicates that Black people are under-represented in use of force incidents. An odds ratio greater than 1.00 indicates that Black people are over-represented in use of force cases. For example, an Odds Ratio of 2.00 would indicate that Black people are twice as involved in TPS use of force cases as they are in the population benchmark under consideration. By contrast, an Odds Ratio of 0.50 would indicates that Black people are 50% less represented in use of force cases than their proportion of the benchmark population would predict.

As discussed in our earlier report, there is no set standard for determining when racial disproportionality (i.e., the over- or under-representation of a particular racial group with respect to a specific social outcome) is cause for concern. However, for the purposes of this study, we have used a relatively high threshold of 50%. In other words, for the purposes of the present analysis, an Odds Ratio of 1.50 or higher will be used to determine whether the over-representation of Black people in TPS use of force cases is noteworthy or not. At times we will discuss the notion of "gross" racial disparity. For the purposes of this report, a gross racial disparity exists when the level of over-representation is 200% or greater (i.e., as indicated by an odds ratio of 3.00 or higher).

Findings

As reported in our earlier reports, the data presented in Table A2 demonstrate that, compared to their presence in the general Toronto population, Black people are highly over-represented in TPS use of force cases documented between January 1st, 2013 and June 30th, 2017.[4] For example, compared to their presence in the general population, Black people are 3.27 times more likely to be involved in an SIU use of force investigation, 4.09 times more likely to be involved in an SIU shooting investigation, 4.42 times more likely to be involved in a lower-level use of force incident, 6.99 times more likely to be involved in a TPS use of force incident that resulted in civilian death, and 7.95 times more likely to be involved in a TPS shooting-related death (see Table A2 below).

We next benchmarked use of force incidents against street checks conducted by the TPS between 2008 and 2013. The results indicate that, using this alternative benchmarking method, Black people remain over-represented in TPS use of force statistics. Black people are, in fact, significantly over-represented in lower-level use of force incidents (Odds Ratio=1.71), SIU shooting investigations (Odds Ratio=1.58), and TPS use of force incidents that resulted in civilian death (Odds Ratio=2.69). Furthermore, using street checks as a benchmark, Black people are still grossly over-represented in TPS shooting deaths (Odds Ratio=3.07). It is important to note, however, that street check benchmarks produced lower Odds Ratios than general population benchmarks. This finding suggests that higher rates of police contact may help explain the over-representation of Black people in TPS use of force statistics. These results are also consistent with other report findings which suggest that, compared to cases involving White people, use of force incidents involving Black people are more likely to involve proactive policing practices (i.e., traffic stops). Overall, these findings are consistent with the argument that racial profiling contributes to the over-representation of Black people in use of force incidents by increasing the number of negative, involuntary contacts between the police and Black residents. The higher the number of negative, involuntary contacts, the greater the likelihood that some cases will devolve into an incident involving police use of force.

TPS use of force incidents were next benchmarked against overall TPS arrest statistics. As with street checks, this benchmarking method produces lower odds ratios than general population benchmarks. However, even when the arrest benchmark is used, Black people are still significantly over-represented in lower-level use of force incidents (Odds Ratio=1.57), SIU Death investigations (Odds Ratio=2.48), and TPS shooting deaths (Odds Ratio=2.82). Black people are also over-represented with respect to TPS shootings (Odds Ratio=1.45) and SIU use of force investigations (Odds Ratio=1.16) – but the Odds Ratio fall below the 1.50 significance threshold used in the current study. Overall, the fact that Black people are over-represented in TPS arrest statistics cannot explain the overrepresentation of Black people in TPS use of force incidents.

TPS use of force incidents were next benchmarked against the TPS arrests for property crime. The results are very similar to those produced by the total arrest benchmark. Using the property crime benchmark, Black people remain significantly over-represented in lower-level use of force incidents (Odds Ratio=1.67), SIU shooting investigations (Odds Ratio=1.54), SIU death investigations (Odds Ratio=2.64), and TPS shooting deaths (Odds Ratio=3.00). However, the over-representation of Black people in SIU use of force investigations falls below the 1.50 level of significance established by this study.

Following the recent example set by American researchers (Tregle et al. 2019), we next benchmarked TPS use of force incidents against TPS arrests for violent crime. It should be noted that when Tregle and his colleagues (2019) benchmarked American fatal officer-involved shootings with American violent crime arrests – they found that Black citizens were *less likely* to be fatally shot by the police than their White counterparts. This is not the case with the TPS. Indeed, using TPS arrests for violent crime as a benchmark, Black people are still 2.23 times more likely to be involved in a TPS fatal use of force incident and 2.54 times more likely to be involved in a fatal, officer-involved

shooting.[5] Furthermore, using arrests for violent crime as a benchmark, Black people are also over-represented in TPS lower-level use of force incidents (Odds Ratio=1.41) and SIU shooting investigations (Odds Ratio=1.30). However, these odds ratios do not meet the 1.50 significance threshold established for this study.

Even when we use arrests for "serious" violence as the benchmark – Black people remain significantly over-represented in TPS fatal shootings. For example, when we use arrests for aggravated assault as the benchmark, Black people are still 1.81 times more likely to be involved in a fatal officer-involved shooting. When we use attempted homicide arrests as the benchmark, Black people are still 1.65 times more likely to be fatally shot by a TPS officer. Finally, when we use homicide arrests as the benchmark, Black people are still 1.57 times more likely to become the victim of a fatal police shooting.

The only benchmark that renders Black over-representation insignificant is arrests for firearms offences (see Table A2). Using firearms-related arrests as the benchmark, Black people are only 1.36 times more likely to be involved in a fatal TPS shooting. This odds ratio is below the 1.50 significance threshold established for this study. Furthermore, using the firearms arrest benchmark, Black people become under-represented in both lower-level use of force incidents (Odds Ratio=0.75) and SIU use of force investigations (Odds Ratio=0.55).

It must be stressed that, due to very small numbers, the use of "serious violence" to benchmark use of force incidents may be statistically problematic. For example, between 2014 and 2017, the TPS made only 164 arrests for homicide (41 per year), 281 arrests for attempted homicide (70 per year), 911 arrests for aggravated assault (228 per year), and 2,469 arrests for firearms offences (617 per year). By contrast, during this same period, the TPS conducted 110,218 arrests in total (27,554 per year) and 43,245 arrests for violent crime (10,811 per year). Based on these numbers, the overall arrest and violent arrest benchmarks are likely far more stable than the benchmarks for "serious violence" (i.e., homicide, attempted homicide, aggravated assault, and firearms violations).

Context and Caution

The analysis presented above reveals that both street check and arrest benchmarking practices reduce – but do not eliminate – the over-representation of Black people in TPS use of force incidents. In other words, even when we consider the proportion of arrests that involve Black suspects, Black people remain significantly over-represented in TPS use of force incidents -- including police shootings and shooting deaths. These findings, in our opinion, provide further evidence that racial bias contributes to racial disparities in TPS use of force. As stated by Goff and his colleagues:

> If, however, a department were to demonstrate racial disparities in the application of force even controlling for arrest rates, this would provide reason for pause. If that pattern held for a plurality of departments, it would also cast doubt on the prospect that disparities in criminal behavior explain disparities in force. In this light, benchmarking police use of force to arrest rates may prove a usefully conservative (prone to false negatives, if anything) test of departmental bias despite the problem of endogeneity.

Nonetheless, the results also reveal that the more serious the arrest category – the less significant the over-representation of Black people. Some may interpret these findings as "evidence" that it is "serious criminal behaviour," not race, that explains why Black people are more likely to be involved in TPS use of force incidents. Such an interpretation of the data should only be considered with great caution. Indeed, aggregate level associations between arrest statistics and use of force statistics diverge significantly from the information provided in individual case files.

For example, the fact that Black people are over-represented in TPS arrest statistics may be misinterpreted as evidence that the Black individuals involved in police use of force incidents have lengthy criminal records involving violent offences and are thus"known to be dangerous" during police encounters. However, between 2013 and 2017, 55.6% of the Black people involved in SIU use of force investigations had no previous criminal record. Furthermore, the fact that Black people are over-represented in firearms arrests may give the impression that the Black individuals involved in TPS use of force cases were usually armed with a gun at the time of the incident. This is not the case. The data indicate that, between 2013 and 2017, two-thirds of the Black individuals involved in SIU investigations were unarmed during the use of force incident. Only 8.3% were in possession of a firearm. Further analysis reveals that very few of the TPS use of force incidents documented by this study – including lower-level use of force cases – involved an attempt to arrest a suspect for a serious violent offence like homicide, attempted homicide, aggravated assault, or firearms possession.

How can we reconcile the fact that, while Black people are over-represented in TPS arrests for violent crime, most Black people involved in TPS use of force incidents were unarmed at the time of the incident and did not have a criminal record? One possibility is that, although serious violence remains quite rare in Toronto, police officers are aware that Black males are over-represented in such cases. This awareness may stem from exposure to race-based arrest statistics, negative media depictions of Black males, orr through informal narratives shared within the police subculture. Officer awareness of the over-representation of Black males in violent crime may lead some officers to stereotype all Black people as potentially dangerous.[6] As a result, police officers may become more fearful or hyper-vigilant

when dealing with Black people in the community. This fear or hyper-vigilance may cause some officers to interpret incidents involving Black people as "more dangerous" and thus deserving of use of force. In sum, the data support the argument that racial stereotyping and can help explain the over-representation of Black people in use of force incidents. This argument is further supported by the Toronto Police Service's own analysis of 2020 use if force data. This analysis further documents that Black people are over-represented in TPS use of force incidents and that this over-representation cannot be explained by other factors including age, gender, nature of police contact, arrest statistics, or the presence of weapons. For example, consistent with the racialized fear or stereotype argument, the TPS analysis reveals that, in 2020, TPS officers were 2.3 times more likely to point a firearm at an unarmed Black person than an unarmed White person (Toronto Police Service 2022).

In the next section of this addendum report we continue our examination of this issue by providing a multivariate analysis that further documents the association between patrol zone characteristics, race-based arrest statistics, street checks, and use of force incidents.

TABLE A1: The Representation of Black People in TPS Street Checks (2008-2013) and Arrest Statistics (2014-2017), by Crime Type

Type of Benchmark	Total Number	Number Involving Black People	Percent Involving Black People	Odds Ratio
Street Checks	2,026,258	461,468	22.8%	2.59
Total Arrests	110,218	27,314	24.8%	2.82
Arrests for Property Crime	50,093	11,664	23.3%	2.65
Arrests for Violent Crime	43,245	11,940	27.6%	3.14
Arrests for Aggravated Assault	911	352	38.6%	4.39
Arrests for Homicide	164	73	44.5%	5.06
Arrests for Attempted Homicide	281	119	42.3%	4.81
Arrests for Firearms Offences	2,469	1,275	51.6%	5.87

TABLE A2: The Representation of Black People in 2013 to 2017 TPS Use of Force Cases,

By Type of Benchmark

Benchmark	Lower-Level Use of	SIU Use of Force	SIU Shooting Investigations	SIU Death Investigations	SIU Shooting Death

	Force	Investigations			Investigations
General Population	4.42	3.27	4.09	6.99	7.95
Street Checks (2008-2013)	1.71	1.26	1.58	2.69	3.07
Total Arrests	1.57	1.16	1.45	2.48	2.82
Arrests for Property Crime	1.67	1.24	1.54	2.64	3.00
Arrests for Violent Crime	1.41	1.04	1.30	2.23	2.54
Arrests for Aggravated Assault	0.99	0.66	0.93	1.59	1.81
Arrests for Homicide	0.87	0.57	0.81	1.38	1.57
Arrests for Attempted Homicide	0.92	0.68	0.85	1.45	1.65
Arrests for Firearms Offences	0.75	0.55	0.70	1.19	1.36

PART B: Multivariate Analyses -- Additional Benchmarks

The results of the multivariate analysis presented in the main report benchmarked use of force incidents against the population prevalence of each racial group in TPS patrol zones. As discussed in the main report, the principal purpose of these models was to test whether the observed racial disparities in the odds of experiencing police use of force persist after controlling for the independent effects of aggregate patrol zone characteristics. Again, patrol zone-level characteristics like violent crime rates or poverty rates may affect the odds that an individual will experience force (see section B of the main report). As we explained in Part A of this Addendum, these analyses relied on population benchmarks, which capture the overall impact of police use of force on racialized communities.

However, general population benchmarks, as discussed above, may not perfectly measure the population at risk of police use of force. Consider the following scenario. Suppose that as a matter of police policy all young persons under the age of 12 years—regardless of race—are at zero risk of experiencing force. If young persons under 12 constitute a larger share of the Black population than the White population, then population-based disparity measures for Black persons will be downwardly biased or will underestimate the risk of force for Black persons. This is because the Black population at risk of force is smaller than that assumed by the benchmark and force is more concentrated among those who are actually at risk. Similarly, if Black persons engage in illegal behaviors at higher rates than Whites, and thus legitimately draw the attention of the police, then population-based disparity benchmarks may be upwardly biased or overstate racial disparities.

It is impossible to determine the actual population at risk of experiencing police use of force using administrative police data (see Knox, Lowe and Mummolo 2019; Knox and Mummolo 2020). As a result, some recommend estimating disparities in use of force across multiple potential benchmarks (see discussion in Part A). Again, previous research focuses on three methodologies: population-based benchmarks, police contact-based benchmarks, and arrest-based benchmarks. Contact-based measures benchmark police use of force against rates at which different populations come into contact with the police, often estimated through general population surveys, police contact (street check) reports, or calls for service. Crime-based measures benchmark rates of force against rates at which different groups are arrested for criminal behaviour.

We note at this juncture that both contact-based and arrest-based benchmarks may underestimate racial disparities in police use of force (Knox, Lowe and Mummolo 2019). As discussed above, if police officers discriminate in stop, search, or arrest decisions—for example, by disproportionately stopping, investigating or charging Black citizens—this will increase the size of the Black population deemed at risk of

police use of force and thereby decrease the estimated risk of force for Black people. In other words, racial bias will increase the denominator in an estimated risk ratio, downwardly biasing the overall estimated risk. A sizable literature, summarized in the main report, suggests that police officers in Canada engage in racially biased stop and arrest practices, meaning that contact and arrest-based measures of racial disparities will be biased downward. As we noted above, Black persons in Toronto are grossly over-represented in TPS street checks and arrests. This overrepresentation is almost certainly a consequence, at least in part, of racial bias among TPS officers. Overall, this means that benchmarking on street checks and arrests should be considered conservative estimates of racial disparities.

That said, below we present the results of a series of negative binomial models which: 1) benchmark use of force against rates for Black, White, and Other Torontonians against the arrest rates for each group; and 2) benchmark use of force rates against rates of police contact for each group as measured by field information reports (street checks).[7] In other words, we estimate whether or not use of force rates are out of proportion with the rates at which members of each group are arrested or come into contact by the police. These models also control for patrol zone characteristics which may affect the odds that an individual will experience force (see section B of the Main report). We control for the patrol-zone violent crime rates, median household income, and the share of single mother headed households in each patrol zone, to account for the potential effects that officer perception of danger in the patrol zone, economic marginalization, and neighborhood disadvantage/social disorder may have on the odds of experiencing force.

Overall, the results from this analysis are consistent with those presented in main report, with some important caveats. We find that Black Torontonians are still far more likely to experience force relative to White Torontonians, and that other racialized minorities are less likely to experience force than White Torontonians, even when race-specific rates of contact with the police and race-specific arrests are set as benchmarks. The relative risk that Black Torontonians will experience force estimated in these models, however, is smaller than the relative risk estimated in the main report. Also, we do not estimate a statistically significant difference between risk of force between Black and White Torontonians when arrests for *violent* crimes are set as the population at risk for force.

We also analyze disparities in use of force events that result in SIU investigations and lower-level use of force separately. Here we find that Black Torontonians are at greater risk of low-level force when race specific rates of contact and arrests are set as benchmarks. That the over-representation of Black people in lower-level use of force incidents persists even when we employ these two, more conservative benchmarks bolsters our confidence that Black people are indeed over-represented in these types of force incidents. Results from models specifically on force events that result in SIU investigations tend to indicate disparity, but disparity that does not reach statistical significance. Overall, the results presented in this addendum report still point to the unjustified and disparate involvement of Black Torontonians in force incidents with the TPS.

Police Contacts

Tables B1, B2, and B3 present results where we benchmark use of force for each racial group against the total number of contacts police had with members of that racial group. Such contacts are not always criminal or lead to an arrest – but may serve as a measure for contacts with police. Our estimates of race-specific contacts with the police are generated from TPS Field Information Reports (FIRs), commonly known as street checks, ranging from 2008 to 2013. Race specific contacts after 2013 were unavailable at the time of writing, but contacts over this range may nevertheless serve as a measure for race-specific rates of contact with police from 2014 to 2017 (see discussion in Section A).

As in the main report, we report results from our final model, Model 5, with simultaneously control for several patrol zone characteristics including the violent crime rate (logged), median household income (logged), and the share of single mother households in the patrol zone. Results presented in Table B1 suggest that benchmarked against rates of police contact and controlling for these patrol zone characteristics, Black Torontonians are 1.59 times more likely to experience force resulting in an SIU investigation relative to White Torontonians when police contacts that generate a TPS Field Information Report are set as the benchmark or population at risk of force. Using the same benchmark, other racialized minorities appear to be slightly less likely to experience force, but the results are not statistically significant.

Table B1: Predictors of all use of force cases in Toronto by

race and patrol zone factors, with race-specific contacts with police as benchmark (January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	**1.61** (1.31–1.96)	**1.59** (1.29–1.91)	**1.58** (1.30–1.92)	**1.60** (1.30–1.95)	**1.59** (1.30–1.94)
Other racial minority	0.94 (0.74–1.19)	0.94 (0.75–1.17)	0.94 (0.75–1.17)	0.94 (0.75–1.19)	0.94 (0.75–1.17)
Patrol zone factors					
Violent crime rate (log)		**1.78** (1.29–2.39)			**1.60** (1.12–2.26)
Median household income (log)			0.42 (0.19–0.87)		0.53 (0.19–1.53)
% Single mother households				1.00 (0.97–1.03)	0.98 (0.94–1.01)

Note: Negative binomial models of low-level use of force cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1. Data for serious use of force cases ranged from January 1, 2013 to June 30th 2017. Data for lower-level use of force cases ranged from July 1st, 2016, to June 30th, 2017

Tables B2 and B3 estimate racial disparities in SIU and lower-level use of force respectively. In Table B2, while we estimate that Black Torontonians are more likely to experience force than White Torontonians when those who have contact with the police are set as the benchmark, the results are not statistically significant. Similarly, and using the same benchmark, we do not estimate a statistically significant difference between the risk that Other racialized minorities will experience force relative to White Torontonians.

Table B2: Predictors of SIU cases in Toronto by race and

patrol zone factors, with race-specific contacts with police as benchmark (January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.26 (0.89–1.74)	1.23 (0.88–1.72)	1.24 (0.88–1.73)	1.28 (0.90–1.75)	1.28 (0.90–1.80)
Other racial minority	0.94 (0.64–1.36)	0.94 (0.64–1.36)	0.93 (0.63–1.35)	0.94 (0.63–1.36)	0.95 (0.65–1.36)
Patrol zone factors					
Violent crime rate (log)		1.30 (0.95–1.80)			1.25 (0.86–1.87)
Median household income (log)			0.86 (0.38–1.84)		0.76 (0.23–2.40)
% Single mother households				0.98 (0.95–1.02)	0.97 (0.93–1.02)
Note: Negative binomial models of SIU cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.					

In contrast, we estimate in Table B3 that Black Torontonians are significantly (1.71 times) more likely to experience lower-level police force when the population who have contact with the police are set as the benchmark. Although we estimate that Other racialized minorities are slightly less likely to experience lower-level force than White Torontonians using the same benchmark, the estimate is not statistically significant.

Table B3: Predictors of lower-level use of force cases in Toronto by race and patrol zone factors, with race-specific contacts with police as benchmark (July 1st, 2016 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	**1.74** (1.38–2.17)	**1.71** (1.37–2.14)	**1.72** (1.36–2.15)	**1.73** (1.37–2.16)	**1.71** (1.35–2.19)
Other racial minority	0.92 (0.70–1.18)	0.91 (0.69–1.18)	0.91 (0.69–1.19)	0.91 (0.69–1.18)	0.91 (0.69–1.20)
Patrol zone factors					
Violent crime rate (log)		**2.08** (1.40–3.10)			**1.79** (1.12–2.92)
Median household income (log)			0.28 (0.10–0.78)		0.46 (0.11–1.80)
% Single mother households				1.01 (0.97–1.06)	0.98 (0.94–1.03)
Note: Negative binomial models of low-level use of force cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.					

All criminal offenses

Tables B4, B5, and B6 show results when use of force is benchmarked against persons arrested for criminal offenses. For use of force cases that result in an SIU investigation, we benchmark against the total number of arrests associated with each racial group in each patrol zone from 2014 to 2017[8]. Since lower-level use of force cases range from July 2016 to June 2017, we set the benchmark to the average number of arrests associated with each group in each patrol zone in 2016 and 2017. When analyzing disparities in all forms of force, we set the total number of arrests from 2014-2017 as the relevant benchmark.

Table B4 considers all use of force events together. Results from Model 5 suggest that Black Torontonians are about 1.27 times more likely to experience any form of force relative to White Torontonians when persons who are arrested for any criminal offense are set as the benchmark or population at risk for force. We also estimate that Other racialized Torontonians are 50% less likely to experience force than White Torontonians using the same benchmark.

Table B4: Predictors of all use of force cases in Toronto by race and patrol zone factors, with arrests set as the benchmark (January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.28 (1.05–1.54)	1.26 (1.03–1.53)	1.26 (1.04–1.53)	1.27 (1.06–1.53)	1.27 (1.04–1.53)
Other racial minority	0.51 (0.41–0.64)	0.50 (0.40–0.63)	0.50 (0.41–0.63)	0.50 (0.40–0.63)	0.50 (0.40–0.64)
Patrol zone factors					
Violent crime rate (log)		1.60 (1.25–2.04)			1.42 (1.07–1.89)
Median household income (log)			0.42 (0.22–0.76)		0.54 (0.23–1.24)
% Single mother households				1.01 (0.98–1.04)	0.99 (0.96–1.02)

Tables B5 and B6 analyze SIU and lower-level force independently. The results from Table B4 suggest that Black Torontonians are only slightly more likely than their White counter parts to experience force resulting in an SIU investigation which the arrested population is set as the benchmark, but the result is not statistically significant. We do find, however, that Other racialized minority groups are 48% less likely to experience serious force relative to White Torontonians using this benchmark.

Table B5: Predictors of SIU cases in Toronto by race and patrol zone factors, with arrests set as the benchmark (January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.02 (0.72–1.43)	1.02 (0.72–1.45)	1.02 (0.73–1.41)	1.03 (0.73–1.43)	1.04 (0.75–1.43)
Other racial minority	**0.52 (0.36–0.76)**	**0.52 (0.36–0.76)**	**0.52 (0.36–0.73)**	**0.52 (0.36–0.76)**	**0.52 (0.36–0.75)**
Patrol zone factors					
Violent crime rate (log)		1.17 (0.87–1.61)			1.11 (0.76–1.63)
Median household income (log)			0.80 (0.36–1.69)		0.69 (0.23–2.09)
% Single mother households				0.99	0.98

		(0.96–1.02)	(0.94–1.02)

Note: Negative binomial models of SIU cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.

In Table B6, however, we estimate that Black Torontonians are about 1.35 times more likely to experience lower-level use of force relative to White Torontonians which the arrested population is set as the population at risk for force. These results here are statistically significant. Similarly, to the estimate presented in Table B5, we estimate that Other racialized minorities in Toronto are 46% less likely to experience force relative to White Torontonians

Table B6: Predictors of lower-level use of force cases in Toronto by

race and patrol zone factors, with arrests are set as the benchmark

(July 1st, 2016 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.36 (1.09–1.68)	1.35 (1.07–1.67)	1.35 (1.07–1.69)	1.35 (1.07–1.69)	1.35 (1.08–1.67)
Other racial minority	0.54 (0.41–0.70)	0.54 (0.41–0.70)	0.54 (0.41–0.70)	0.54 (0.41–0.70)	0.54 (0.41–0.69)
Patrol zone factors					
Violent crime rate (log)		1.88 (1.33–2.65)			1.62 (1.08–2.45)

			0.28		0.46
Median household income (log)			(0.11–0.66)		(0.14–1.51)
% Single mother households				1.02 (0.99–1.06)	1.00 (0.95–1.04)

Note: Negative binomial models of low-level use of force cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.

Violent Crime Arrest Rates

Finally, Tables B7, B8, and B9 present the results of negative binomial models where violent crime arrests are set as the benchmark. As before, when analyzing SIU use of force cases, we benchmark against the total number of arrests for violent crimes associated with each racial group in each patrol zone from 2014 to 2017. When analyzing low level use of force, we use the average number of arrests for violent crimes in 2016 and 2017. When analyzing disparities in all forms of force, we set the total number of criminal offenses from 2014-2017 as the relevant benchmark.

Table B7 presents the results of analysis of disparities in any form of force with arrests for violent crime set as the benchmark. Here, while we estimate that Black Torontonians are slightly more likely to experience any form of force that White Torontonians, the results are statistically insignificant. Other racial minorities are 50% less likely to experience any form of force compared to White Torontonians when arrests for violent crime is set as the benchmark and the results are statistically significant.

Table B1: Predictors of SIU cases in Toronto by race

and patrol zone factors, with arrests for violent crime set as the benchmark

(January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.14 (0.94–1.39)	1.13 (0.93–1.36)	1.13 (0.93–1.37)	1.14 (0.94–1.36)	1.13 (0.93–1.38)

	Model 1	Model 2	Model 3	Model 4	Model 5
Other racial minority	**0.50** (0.40–0.63)	**0.50** (0.39–0.62)	**0.50** (0.40–0.61)	**0.50** (0.40–0.62)	**0.50** (0.39–0.61)
Patrol zone factors					
Violent crime rate (log)		**1.89** (1.44–2.48)			**1.68** (1.22–2.31)
Median household income (log)			**0.35** (0.18–0.70)		0.50 (0.20–1.36)
% Single mother households				1.01 (0.98–1.04)	0.98 (0.95–1.01)

Note: Negative binomial models of SIU cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.

Table B2 presents results specifically for SIU cases and suggests that Black Torontonians are slightly less likely to experience force relative to their White counterparts when arrests for violent offenses are set as the benchmark, but the results are not statistically distinguishable from zero. We do estimate, however, that Other racialized minority groups are about 49% less likely to experience force resulting in an SIU investigation when those force incidents are benchmarked against rates of arrest for violent crime.

Table B2: Predictors of SIU cases in Toronto by race

and patrol zone factors, with arrests for violent crime set as the benchmark

(January 1st, 2013 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					

Black	0.91 (0.65–1.27)	0.90 (0.64–1.25)	0.89 (0.64–1.25)	0.92 (0.66–1.28)	0.92 (0.65–1.29)
Other racial minority	**0.52** **(0.35–0.74)**	**0.51** **(0.35–0.74)**	**0.51** **(0.35–0.74)**	**0.51** **(0.35–0.73)**	**0.51** **(0.35–0.75)**
Patrol zone factors					
Violent crime rate (log)		**1.39** **(1.03–1.93)**			1.32 (0.91–1.92)
Median household income (log)			0.68 (0.31–1.50)		0.69 (0.22–2.14)
% Single mother households				0.99 (0.95–1.02)	0.97 (0.93–1.02)
Note: Negative binomial models of SIU cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.					

Finally, Table B3 presents results that analyze low-level force incidents. Again, while we estimate that benchmarked against arrests for violent crimes and controlling for various patrol zone characteristics, Black Torontonians are slightly more likely to experience lower-level use of force relative to White Torontonians, the results of this analysis are not statistically significant. We do estimate, however, that other racialized minorities are about 50% less likely to experience low-level force relative to White Torontonians when such force events are benchmarked against participation in violent crime arrests.

Table B9: Predictors of low-level use of force cases in Toronto by race and patrol zone factors, with arrests for violent crime set as the benchmark

(July 1st, 2016 – June 30th, 2017)

	Model 1	Model 2	Model 3	Model 4	Model 5
Race (White set as reference group)					
Black	1.24 (0.90–1.71)	1.20 (0.88–1.62)	1.21 (0.89–1.67)	1.23 (0.90–1.72)	1.21 (0.90–1.63)
Other racial minority	**0.50** **(0.35–0.73)**	**0.50** **(0.36–0.70)**	**0.50** **(0.35–0.70)**	**0.50** **(0.34–0.71)**	**0.50** **(0.35–0.70)**
Patrol zone factors					
Violent crime rate (log)		**2.23** **(1.71–2.95)**			**1.93** **(1.41–2.63)**
Median household income (log)			0.27 (0.13–0.54)		0.42 (0.17–1.05)
% Single mother households				1.00 (0.98–1.03)	0.98 (0.95–1.01)

Note: Negative binomial models of low-level use of force cases in Toronto patrol zones. 95% credible intervals are given in parentheses. Effect of race is relative to White reference group. Cell values give effect of a unit change on odds of force. Values in bold are those where 95% credible intervals do not overlap with 1.

Conclusion

Our results show that when contacts with the police and arrests are used to estimate the population at risk of police use of force, Black Torontonians remin at an elevated risk of force compared to White Torontonians, while other racialized minorities are at lower risk. We do not, however, estimate any significant racial differences when we narrowly benchmark force incidents against arrests for violent offenses, or when looking specifically at incidents of force that result in SIU investigations.

As anticipated, the size of the Black-White disparity we estimate when we benchmark use of force incidents against arrests and police contact are smaller than when general population is used as the benchmark. Again, this is likely a consequence, at least in part, of racially biased stop and arresting practices by TPS officers. Racial bias in stop and arrest decisions inflates the denominator used to calculate risk

ratios and thereby downwardly biases the estimated risk that Black persons will experience force. It may also be a consequence of differential involvement in behaviors and activities that result in police use of force. As in the main report, we also find that use of force is generally more likely where violent crime is higher. Despite controlling for violent crime and other patrol zone factors, however, our overall finding is that racial disparities persist and remain troubling. That is, they point to the unjustified and disparate involvement of Black Torontonians in force incidents that can erode mental and physical wellbeing, police legitimacy, success in school for children, and trust in government.

PART C: Benchmarking "Out-of-Sight" Traffic Offences

Our previous report (Wortley and Jung 2020) documented that, compared to their presence in the general Toronto population, Black people are grossly over-represented in "out-of-sight" traffic offences. These offences include charges for driving without a license, driving while suspended, driving without insurance, and driving without proper vehicle registration. These offenses are often labelled as "out-of-sight" offences because, unlike violations for speeding or other illegal driving practices, officers cannot observe these violations from the street or their patrol vehicles. These violations are only identified once a traffic stop has been initiated. Scholars maintain that the over-representation of Black people in out-of-sight traffic charges provides additional evidence of racial bias or racial profiling with respect to who the police decide to stop, question, and investigate. In other words, racial differences in "out-of-sight" driving offences – especially those that do not involve another visible offence (like speeding) – reflect police discretion with respect to surveillance and proactive investigation (Harris 2003; Wortley and Tanner 2003). Consistent with the racial disparities observed in TPS street check data, Black people may be over-represented in "random" traffic stops compared to White people (see Foster and Jacobs 2018). Ultimately, greater exposure to "random" traffic stops is a form of racial bias that increases the likelihood of Black people being identified for an "out-ofsight" driving offence. Since they are less likely to be stopped by the police to begin with, White drivers are also less likely to be caught for an "out of sight" traffic violation than their Black counterparts.

Table C1 documents the representation of Black people in "out-of-sight" traffic violations using general population benchmarks. This data was presented in our earlier report. The results indicate that, although they represent only 8.8% of Toronto's population, Black people were identified as the accused in 35.2% of TPS out-of-sight traffic offences documented between 2013 and 2017. In other words, Black people are four times more likely to be involved in an out-of-sight traffic offence than their presence in the general population would predict. Furthermore, the out-of-sight charge rate for Black people (1,194 per 100,000) is 4.9 times greater than the rate for White people (244 per 100,000) and 6.9 times greater than the rate for other racial minorities (174 per 100,000).

Scholars,community advocates and police officials have all identified that, when it comes to benchmarking driving activity, general population estimates have limitations and should be supplemented with estimates of the actual driving population. Thus, to address these concerns, we draw upon data from the 2016 Canadian Census that captures the number of Toronto residents who drive to work using a car, truck, or other personal motor vehicle. Commute to work estimates may be considered superior to population benchmarks because they better capture the driving population (i.e., those who are of the legal driving age and have access to a motor vehicle). Commute to work benchmarks may also capture people who drive frequently and are thus at greater risk of police-initiated traffic stops. However, commute to work benchmarks are not without their limitations. These figures do not capture, for instance, people who walk or use public transit to commute to work -- but use a car frequently for leisure purposes. These estimates also do not capture people who have access to motor vehicles but are not currently employed – including retired people, the unemployed, and homemakers. Commute to work estimates also do not capture young people who may drive to get to high school, college, or university or those who drive often for leisure purposes. Unfortunately, we could not find any alternative benchmarks of Toronto's driving population that disaggregate by the driver's racial background.

Table C2 benchmarks "out-of-sight" traffic offences against the Toronto population that commutes to work by motor vehicle. The results indicate that, using this driving benchmark, Black people become even more over-represented in out-of-sight traffic offences. For example, although they represent only 6.9% of Torontonians who drive to work, Black people were involved in 35.2% of all out-of-sight traffic offences documented by the TPS between 2013 and 2017. In other words, Black people are now 5.1 times more likely to be involved in an out-of-sight traffic offence than their presence in the driving population would predict. Thus, the Odds Ratio documenting Black representation in out-of-sight charges climbs from 4.00 using the general population benchmark to 5.10 using the driving benchmark. Furthermore, the Black out-of-sight offence rate (7,182 per 100,000) is now 6.8 times greater than the White rate (1,054 per 100,000) and 8.1 times greater than the rate for other racial minorities (889 per 100,000).

TABLE C1: Total Charges for "Out-of-Sight" Driving Offences, by Race of Civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2016 General Population Benchmark)

Racial Group	Population Estimate	Percent of Population	Number of Charges	Percent of Charges	Odds Ratio	Charge Rate (per 100,000)
White	1,322,656	48.4	3,230	39.7	0.82	244.2
Black	239,850	8.8	2,864	35.2	4.00	1,194.1
Other Minority	1,169,065	42.8	2,035	25.0	0.58	174.1
TOTAL	2,731,571	100.0	8,129	100.0	1.00	297.6

TABLE C2: Total Charges for "Out-of-Sight" Driving Offences, by Race of Civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2016 Census Benchmark of Toronto Population that Commutes to Work by Motor Vehicle)

Racial Group	Population that Drives to Work	Percent of Population	Number of Charges	Percent of Charges	Odds Ratio	Charge Rate (per 100,000)
White	306,380	53.3	3,230	39.7	0.74	1,054.2
Black	39,875	6.9	2,864	35.2	5.10	7,182.4
Other Minority	229,005	39.8	2,035	25.0	0.63	888.6
TOTAL	575,260	100.0	8,129	100.0	1.00	1,413.1

Tables C3 benchmarks out-of-sight traffic offences against general population estimates broken down by both race and gender. Using general population benchmarking, Black males emerge as massively over-represented in out-of-sight traffic offences. Although they represent only 4.0% of Toronto's population, they were involved in 30.1% of all out-of-sight traffic offences captured by the TPS between

2013 and 2017. In other words, Black males are 7.5 times more likely to be involved in an out-of-sight traffic offence than their presence in the general population would predict. By contrast, using general population estimates, Black women are neither over-represented nor under-represented in out-of-sight traffic charges. Black women represent 4.8% of Toronto's population and 5.2% of those charged with an out-of-sight traffic offence (Odds Ratio=1.08).

Table C4 benchmarks out-of-sight traffic offences against Census estimates of Toronto's driving population broken down by race and gender. The results indicate that Black males remain grossly over-represented in out-of-sight traffic offences regardless of the benchmarking method used. Black males are still 7.5 times more likely to be involved in an out-of-sight traffic offence than their presence in the general driving population. Furthermore, the Black male charge rate (10,596 per 100,000) remains 6.8 times greater than the rate for White males (1,547 per 100,000) and 8.7 times greater than the rate for males from other racial minority groups (1,214 per 100,000).

While the use of the driving benchmark does not change the representation of Black males in out-of-sight traffic offences – it does change the situation for Black women. As discussed above, when we use the general population benchmark, Black women are not over-represented in these types of offences. However, when we use the driving benchmark, Black women become significantly over-represented (see Table C4). Although they represent only 2.9% of Toronto's driving population, Black women were involved in 5.2% of all out-of-sight traffic offences documented by the TPS between 2013 and 2017. In other words, Black women are 1.8 times more likely to be involved in an out-of-sight traffic violation than their presence in the general driving population would predict. Furthermore, the out-of-sight charge rate for Black women (2,498 per 100,000) is now 6.9 times higher than the rate for White women (361 per 100,000) and 8.1 times greater than the rate for women from other racial minority groups (309 per 100,000). In fact, using the driving population benchmark, the out-of-sight charge rate for Black women (2,498 per 100,000) is now 1.6 times greater than the rate for White males (1,547 per 100,000) and 2.1 times greater than the rate for other minority males (1,214 per 100,000).

In sum, when we use an estimate of Toronto's driving population as our benchmark, Black people remain grossly over-represented in TPS out-of-sight traffic charges. In fact, the over-representation of Black people – particularly Black women – increases when we use the driving benchmark as opposed to the general population benchmark. These findings are consistent with both police statistics and survey data that suggest that Black people are much more likely to be stopped and questioned by TPS officers than people from other racial backgrounds. Together, these findings strongly support the argument that the TPS has engaged in racial profiling.

TABLE C3: Total Charges for "Out-of-Sight" Driving Offences, by Race and Gender of Civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2016 General Population Benchmark)

Racial Group	Population Estimate	Percent of Population	Number of Charges	Percent of Charges	Odds Ratio	Charge Rate (per 100,000)
White male	645,960	23.6	2,766	34.0	1.44	428.2
White female	676,690	24.8	461	5.7	0.23	68.1
Black male	109,870	4.0	2,444	30.1	7.53	2,224.4
Black female	129,980	4.8	420	5.2	1.08	323.1
Other minority male	557,760	20.4	1,781	21.9	1.07	319.3

Other minority female	611,315	22.4	254	3.1	0.14	41.5
TOTAL	2,731,571	100.0	8,126	100.0	1.00	297.5

TABLE C3: Total Charges for "Out-of-Sight" Driving Offences, by Race and Gender of Civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2016 Census Benchmark of Toronto Population that Commutes to Work by Motor Vehicle)

Racial Group	Population that Drives to Work	Percent of Population	Number of Charges	Percent of Charges	Odds Ratio	Charge Rate (per 100,000)
White male	178,500	31.0	2,766	34.0	1.10	1,549.6
White female	127,880	22.2	461	5.7	0.26	360.5
Black male	23,065	4.0	2,444	30.1	7.53	10,596.1
Black female	16,810	2.9	420	5.2	1.79	2,498.5
Other minority male	146,705	25.5	1,781	21.9	0.86	1,214.0
Other minority female	82,300	14.3	254	3.1	0.22	308.6
TOTAL	575,260	100.0	8,126	100.0	1.00	1,412.6

PART D: Benchmarking Failure to Comply Charges

In our earlier report (Wortley and Jung 2020) we explored the representation of Black people in TPS failure to comply charges. Using Toronto's resident population as a benchmark, we found that Black people were grossly over-represented in failure to comply charges (see Table D1). Although they represent only 8.8% of Toronto's population, Black people represent 32.7% of those involved in the failure to comply charges documented by the TPS between 2013 and 2017. In other words, Black people are 3.7 times more likely to be charged with a failure to comply offence than their representation in the general population would predict. By contrast, White people and people from other racial minority groups are under-represented. The failure to comply charge rate for Black people (2,013 per 100,000) is 4.1 times greater than the White rate (493 per 100,000) and 6.9 times greater than the rate for people from other racial minority groups (292 per 100,000).

Table D1: Total charges for failure to comply offences, by race of civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2016 General Population Benchmark)

Racial group	Population estimate	Percent of population	Number of charges	Percent of charges	Odds ratio	Charge rate (per 100,000)
White	1,322,656	48.4	6,514	44.1	0.91	492.5
Black	239,850	8.8	4,828	32.7	3.71	2,012.9
Other minority	1,169,065	42.8	3,417	23.2	0.54	292.3
Total	2,731,571	100.0	14,759	100.0	1.00	540.3

Although general population benchmarking documents the impact that these types of charges have on the Black community in general, critics may argue that this benchmarking method does not capture the population "at risk" of facing failure to comply offences. A superior benchmark may be the population that has experienced an arrest during the study period. After all, one must be arrested before release conditions can be applied.[9] Thus, in Table D2, we benchmark failure to comply charges against the population experiencing a TPS arrest between 2014 and 2017. The data suggest that using arrest as opposed to general population benchmarking greatly reduces the over-representation of Black people in failure to comply charges. Black people represent 24.8% of those arrested by the TPS between 2014 and 2017. They also represent 32.7% of those charged with a failure to comply offence during this time period (Odds Ratio=1.32). Thus, using the general population benchmark, Black people are 272% more likely to experience a failure to comply charge. However, using the arrest benchmark, Black people are only 32% more likely to be charged with this type of offence. Similarly, using the general population benchmark, the Black failure to comply charge rate is 4.1 times greater than the White rate. However, when we use the arrest benchmark, the Black charge rate is only 1.3 times greater than the White rate.

In sum, using the arrest benchmark, rather than the general population benchmark, significantly reduces the over-representation of Black people in failure to comply charges. In fact, using the arrest benchmark, the Odds Ratio for Black people drops below the 1.50 threshold established by this inquiry. It must be stressed, however, that this reduction in Black over-representation does not eliminate evidence of racial bias. Indeed, the data still reveal that Black arrestees are 32% more likely to experience a failure to comply charge than their presence within the arrested population. Furthermore, many steps are involved in the application and enforcement of release conditions. To begin with, an individual must first be arrested by the police. Thus, as documented by previous research, if racial bias exists with respect to police surveillance and arrest decisions, this bias will directly contribute to the over-representation of Black people in failure to comply charges (see discussion in Wortley and Jung 2020; Goff et al 2016). Furthermore, after arrest, the police must decide whether to release an accused person or hold them for a show-cause hearing. Those held for show-cause hearings are at increased risk of having conditions applied to their release. Thus, as previous research indicates, if police are more likely to hold Black accused for show-cause hearings, this bias would further contribute to the over-representation of Black people in failure to comply charges (see Kellough and Wortley 2002). Next, during a show cause hearing, accused persons can either be detained in custody or released with or without conditions. Thus, as previous research exists, if Black accused are more likely to be released with a high number of conditions, this bias would further increase their risk of facing a failure to comply charge (see Kellough and Wortley 2004). Finally, as demonstrated by previous research, Black accused released to the community are subjected to higher levels of police surveillance than accused from other racial backgrounds. This type of racial profiling will, once again, contribute to the over-representation of Black people in failure to comply charges. Clearly, these findings underscore the need to further study – through the collection of race-based data – how racial bias may contribute to decision-making at various stages of the justice system.

Table D2: Total charges for failure to comply offences, by race of civilian,

Toronto Police Service, November 5, 2013, to July 31, 2017

(2014 to 2017 TPS Arrest Benchmark)

Racial group	Total Arrests	Percent of Arrests	Number of Failure to Comply charges	Percent of Failure to Comply charges	Odds Ratio	Charge rate (per 100,000)
White	46,067	41.8	6,514	44.1	1.06	14,140.3
Black	27,314	24.8	4,828	32.7	1.32	17,675.9
Other minority	36,837	33.4	3,417	23.2	0.69	9,276.0
Total	110,218	100.0	14,759	100.0	1.00	13,390.7

References

Bowling, Ben and Coretta Phillips. 2007. "Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search. *Modern Law Review 70* (6): 936-961.

Bürkner, Paul-Christian. 2017. "Brms: An R Package for Bayesian Multilevel Models Using Stan." *Journal of Statistical Software* 80(1):1–28.

Edwards, Frank, Michael H. Esposito, and Hedwig Lee. 2018. "Risk of Police-Involved Death by Race/Ethnicity and Place, United States, 2012–2018." *American Journal of Public Health* 108(9):1241–48.

Foster, Lorne and Jacobs, Les. 2018. Racial Profiling and Human Rights Policy in Canada: The New Legal Landscape. Toronto: Irwin Press.

Geller, Amanda, and Jeffrey Fagan. 2010. "Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing." *Journal of Empirical Legal Studies* 7(4):591–633.

Gelman, Andrew, Jeffrey Fagan, and Alex Kiss. 2007. "An Analysis of the New York City Police Department's 'Stop-and-Frisk' Policy in the Context of Claims of Racial Bias." *Journal of the American Statistical Association* 102(479):813–23.

Gelman, Andrew, and Jennifer Hill. 2006. *Data Analysis Using Regression and Multilevel/Hierarchical Models*. Cambridge: Cambridge University Press.

Goff, Phillip Atiba, Tracey Lloyd, Steven Rapheal, and Jack Glaser. 2016. *The Science of Justice: Race, Arrests and Police Use of Force*. Los Angeles, CA: Centre for Policing Equity, University of California.

Harris, D. 2003. *Profiles in injustice: Why racial profiling cannot work*. New York, NY: The New Press.

Jiang, Shuang, Guanghua Xiao, Andrew Y. Koh, Jiwoong Kim, Qiwei Li, and Xiaowei Zhan. 2019. "A Bayesian Zero-Inflated Negative Binomial Regression Model for the Integrative Analysis of Microbiome Data." *Biostatistics* (kxz050). doi: 10.1093/biostatistics/kxz050.

Kellough, Gail and Scot Wortley. 2002. "Remand for Plea: The Impact of Race, Pre-trial Detention and Over-Charging on Plea Bargaining Decisions." *British Journal of Criminology* 42 (1): 186-210.

Miller, Joel. 2010. "Stop and Search in England: A Reformed Tactic or Business as Usual*?" British Journal of Criminology 5*0 (5): 954-974.

MVA and J. Miller. 2000. *Profiling Populations Available for Stops and Searches: Police Research Series Paper 131*. London, England: Home Office.

Pew, Timo, Richard L. Warr, Grant G. Schultz, and Matthew Heaton. 2020. "Justification for Considering Zero-Inflated Models in Crash Frequency Analysis." *Transportation Research Interdisciplinary Perspectives* 8:100249. doi: 10.1016/j.trip.2020.100249.

Riley, James, Davnet Cassidy and Jane Becker. 2009. *Statistics on Race and the Criminal Justice System*. London, England: Ministry of Justice.Ross, Cody T. 2015. "A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014." *PloS One* 10(11):e0141854.

Toronto Police Service. 2022. *Race and Identity-Based Data Collection Strategy: Understanding Use of Force and Strip Searches in 2020*. Toronto Police Service and Toronto Police Services Board.

Tregle, Brandon, Justin Nix and Geoffrey Alpert. 2019. "Disparity does not mean bias: Making sense of observed racial disparities in fatal officer-involved shootings with multiple benchmarks." *Journal of Crime and Justice* 42 (1): 18-31.Wortley, Scot ,Ayobami Laniyonu and Erick Laming. 2020. *Race and the Use of Lethal and Non-Lethal Force by the Toronto Police Service: Final Report*. Toronto: Ontario Human Rights Commission. http://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%2…

Wortley, Scot and Maria Jung. 2020. *Documenting Racial Disparity: An Analysis of Arrest and*

Charge Data from the Toronto Police Service. Toronto: Ontario Human Rights Commission. http://www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

Wortley, Scot and Gail Kellough. 2004. "Racializing Risk: Police and Crown Discretion and the Over-representation of Black People in the Ontario Criminal Justice System." Pp. 173-205 in Anthony Harriott, Farley Brathwaite and Scot Wortley (Eds.), *Crime and Criminal Justice in the Caribbean and Among Caribbean Peoples*. Kingston, Jamaica: Arawak Publications.

Wortley, S., & Tanner, J. 2003. "Data, denials and confusion: The racial profiling debate in Toronto." *Canadian Journal of Criminology and Criminal Justice*, 45(3): 367 – 390.

Methodological Appendix A

Here we provide additional details on the multi-level Bayesian[10] models run to test for racial disparities in use of force across patrol zones while accounting for patrol zone level characteristics. We provide the following details: a) additional data cleaning that was required to perform the analysis; b) the precise specification of our models; and c) technical details on how the models were fit.

Data Cleaning and Manipulation

Geocoding Use of Force Incidents – GIS software was required to geolocate some lower-level use of force cases and a lack of geographic data on some SIU cases meant that those cases were dropped from the analysis. Of the 198 SIU cases in the dataset, 9 cases (4.5%) did not contain information on the patrol zone in which they occurred or did not occur in the City of Toronto and were dropped from the analysis.

Of the 578 lower-level use of force cases analyzed 3 (.3%) incidents were marked as occurring outside the City of Toronto and were dropped from the analysis. Officers did not mark the patrol zone in which incidents took place in 26 incidents. In 13 of these incidents, however, they did note the XY coordinates where the incident occurred. GIS software was used to successfully geolocate these incidents to the patrol zone where they occurred. The remaining 13 incidents were dropped from the analysis.

In S1, we characterize the racial composition of the 26 total cases that were not geolocated.

S1: Cases dropped due to a lack of geo-identifiers

Race	Total	% Of Cases
Minor Use of Force	578	100%
Black	1	0.2%
White	8	1.4%
Other	4	0.7%
Outside Toronto	3	0.5%
SIU Cases	198	100%
Black	4	2.0%
White	4	2.0%
Other	1	0.5%

All Use of Force	25	3.2%

Model Specification

As we describe in the main text, we fit multi-level negative binomial models to evaluate whether racial disparities in police use of force persist after accounting for precinct-level characteristics and estimate them in a Bayesian framework. We do so to simultaneously account for the overdispersion in counts of use of force cases and the grouping of use of force cases into patrol zones.[11] We estimate the total number of use of force cases for each racial group across patrol zones using the following model:

$$y_{ij} \sim Negative\ Binomial(pop_{ij} * e^{u+\alpha_i+x_j\beta_j+\beta_p}, \phi)$$
$$\beta_p \sim Normal(0, \sigma_\beta^2)$$

where y_{ij} is the total number of force cases experienced by members of racial group i in patrol zone j, pop_{ij} is the race-specific population at risk of force, a_i is an indicator variable for each racial group, β_j is a vector that stores patrol-zone specific variables (including the log of violent crime rate, the log of the median household income, and share of households headed by single mothers), β_p controls for unmeasured patrol zone level variation, and the parameter ϕ controls the shape of the negative binomial distribution and is estimated from the data (c.f. Gelman and Hill 2006; Jiang et al. 2019; Pew et al. 2020). Following Bürkner (2017), we set noninformative priors on $u, a_i,$ and βj.

Fitting the Model

We fitted the model using Stan in R suing the brms package (Bürkner 2017). Hamiltonian Monte Carlo (MCMC) sampling was performed on four chains, each with 1,000 warm-up draws and 2,000 sampling draws, resulting in 8,000 draws from the posterior total. Trace plots were used to confirm model convergence.

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[1] Parts A, C, and D of this addendum report were prepared by Dr. Scot Wortley, Centre for Criminology, University of Toronto. Part B of the report was prepared by Dr. Ayobami Laniyono, Centre for Criminology and Sociolegal Studies, University of Toronto.

[2] The Special Investigation Unit (SIU) is an Ontario police oversight agency that is tasked with investigating incidents in which civilians are either killed or seriously injured by police activity. The SIU also investigates allegations of sexual assault against sworn officers. The SIU does not investigate use of force incidents that do not result in serious injury. Such cases are, however, supposed to be documented by TPS injury and/or general occurrence reports.

[3] We recognize that the TPS documentation of street checks declined dramatically after 2013. However, survey evidence suggests that Black people are still much more likely to report being stopped, questioned, and searched by the police than people from other backgrounds (Wortley 2021). Thus, we feel that the 2008-2013 TPS street check data provides a reasonable measure of racial differences in police contact. It is also the only measure currently available. This fact underscores the importance of future race-based data collection activities with respect to TPS stops and other forms of police contact.

[4] As discussed in a *Disparate Impact*, information on SIU investigations was collected for the period starting January 1st, 2013 and ending June 30th, 2017. Data on TPS lower-level use of force cases were collected for the period starting January 1st, 2016 and ending June 30th

2017. These were the data made available to us at the time of the report.

[5] Tregle et al. (2019) employ a different strategy to calculate Odds Ratios. We conducted an analysis of the TPS data, using this alternative methodology, and produced the same constellation of results as reported above.

[6] Please see the "racial stereotype" and "integrated fear" models presented in a *Disparate Impact* for a deeper discussion of how racialized stereotypes and fears can help explain racial differences in exposure to police use of force.

[7] A brief explanation of binomial modelling techniques is provided in Appendix A of this report. The general purpose of these models is to determine whether racial disparities in police use of force incidents persist after other theoretically relevant variables have been taken into statistical account. For example, some have argued that Black people are not over-represented in use of force cases because of race or racial bias, but because they are more likely to reside in disadvantaged, high crime communities. The analysis presented below addresses these concerns.

[8] TPS did not provide arrest data for 2013.

[9] It must be stressed that arrest benchmarking also has its limitations. Indeed, many arrestees are released to the community without conditions. Thus, a superior benchmark would be the population of arrestees who are released to the community *with conditions*. This is the population most at risk of facing a failure to comply charge. Unfortunately, we were not able to obtain such data.

[10] Bayesian models are statistical models that utilize Bayes theorem to generate a posterior distribution for some quantities or variables of interest. Bayesian models combine a prior set of beliefs about those variables of interest with a likelihood (e.g., data) to produce that posterior distribution. Multi-level Bayesian models are standard in analyses of police use of force where incidents are geolocated to a police precinct, county, or state (see Edwards, Esposito, and Lee 2018; Geller and Fagan 2010; Gelman, Fagan, and Kiss 2007; Ross 2015). There are many advantages to this modeling approach (see Gelman and Hill 2006). In this context, modeling use of force in a Bayesian framework allows us employ multi-level models despite the fact that there are relatively few patrol zones in Toronto.

[11] Overdispersion refers to greater levels of variance or variability in the data—here, use of force cases across patrol zones—than would be expected if we assumed use of force followed a simpler count distribution (for example, a Poisson distribution).

Appendix 4 - Summary of Reports

TORONTO

The Police and Community Engagement Review: Phase II – Internal Report & Recommendations **(2013)**

By: The Toronto Police Service

[PACER Report]

Online (pdf): https://tpsb.ca/The%20PACER%20Report.pdf

In 2012, Police Chief William Blair directed the Chief's Internal Organization Review (CIOR) to examine all aspects of the TPS related to community engagement, and specifically the Field Information Report (FIR) process. This review was the foundation for Phase II of the Police and Community Engagement Review (PACER). The PACER Report focused on how the TPS could enhance public trust and safety, while delivering bias-free service. In particular, the review team recognized the need to address systemic bias and racial profiling within the Service.

Phase II of the review focused on consultations with community members and internal TPS members, seeking input to improve community engagement and the FIR process. During consultations, community members expressed concerns about biased policing and racial profiling. The Service noted that it must support TPS members by providing the necessary tools and training for delivering bias-free police services. The review provided 31 recommendations to the Chief, which addressed 11 areas of the Service. These areas ranged from service governance to performance management, as well as professional standards and public accountability.

This issue has been with us for ages: A community-based assessment of police contact carding in 31 division, Final Report (2014)

By: Logical Outcomes

[Logical Outcomes Report]

Online (pdf): https://youthrex.com/wp-content/uploads/2019/02/CAPP-Final-Report.pdf

In 2014, Logical Outcomes led a community-based research project called the Community Assessment of Police Practices (CAPP) to examine community satisfaction with the TPS's 31 Division. The project surveyed over 400 community members across 31 Division and conducted two community forums. In its findings, the report noted that very few members of the public were aware of the new policy and formal procedures regarding "carding." Moreover, the public held widespread dissatisfaction with police interactions in the community. Overall, the project found a low level of trust between the community and the police, including experiences of racial profiling and abuses of power.

Reflecting these findings, the report provided 10 recommendations for the TPSB. The recommendations established a range of improvements including:

- instituting a ban on the carding of minors
- purging contact cards filled out prior to 2014 from the databases
- developing community-level "info clinics" for interested in accessing their information from police databases
- creating a robust and sustained community engagement strategy.

Police Encounters with People in Crisis (2014)

By: The Honourable Frank Iacobucci for Chief William Blair of the Toronto Police Services

[Iacobucci Report]

Online (pdf): https://www.tps.ca/media/filer_public/2b/db/2bdb73f0-d271-4d8b-8e68-f59a34816fb6/police_encounters_with_people_in_crisis_2014.pdf

In August 2013, Chief of Police Willliam Blair of the TPS requested the Honourable Frank Iacobucci to conduct an independent review of the use of lethal force by the TPS. In particular, the review would focus on police encounters with "people in crisis" or those experiencing mental or emotional crises who require urgent care within the mental health system. The review included examining the policies, practices, procedures, and services of the TPS relating to the lethal use of force with respect to persons in crises. In addition, the review involved meeting with stakeholders, examining equipment, observing training, comparing best practices, analyzing academic literature, and consulting with experts. The final report was made public and provided 84 recommendations to prevent lethal outcomes.

The report identified a key theme of interdisciplinary cooperation between police and mental health professionals, as well as mental health consumer-survivors. Furthermore, while former Justice Iacobucci's mandate did not extend to review the mental health system, he noted that the availability of access to mental health services played a role in the high rate of police encounters with persons in crises. Stemming from his findings, the recommendations ranged from greater training and oversight to de-escalation strategies, as well as calling on other institutions to act such as the Ministry of Health and Long-Term Care.

Understanding the Impact of Police Stops: A report prepared for the Toronto Police Services Board (2017)

By: Anthony N Doob and Rosemary Gartner

(TPSB: Police Stops Report)

Online (pdf): https://www.crimsl.utoronto.ca/sites/crimsl.utoronto.ca/files/DoobGartnerPoliceStopsReport-17Jan2017r.pdf

Relying on the works produced by the Centre for Criminology and Sociolegal Studies of the University of Toronto, Anthony Doob and Rosemary Gartner prepared a report for the TPSB to examine issues related to police stops. The report outlined some of the reliable research on the impacts of "street stops" on ordinary citizens. Moreover, the report examined whether street stops have a short-term effect on local crime. While the report was not an exhaustive literature review, the report also provided one-page summaries of the cited articles.

Based on the review, the report found it was quite clear that the usefulness of the stops could be exaggerated and that there was difficulty finding data to support their continued use in policing. The report found little evidence to support practices where police stop, question, and search citizens. The harms caused by these practices outweighed any evidence on the usefulness of police stops.

Use of Force by the Toronto Police Service: Final Report **(2020)**

By: Scot Wortley, Ayobami Laniyonu, Erick Laming

[Use of Force 2020 Report]

Online (pdf):
https://www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf

This is the expert report on use of force that was part of the OHRC's second interim report on its inquiry into anti-Black racism by the TPS.

The report provided a deeper analysis of the 2013 to 2017 data from the SIU that the OHRC analyzed in the first interim report, as well as an analysis of lower-level use of force between 2016 and 2017. Lower-level use of force is force that may not reach the threshold of serious injury, death, or allegations of sexual assault required to engage the SIU's mandate, but may still result in serious physical and emotional impacts.

The experts indicated that Black people were significantly overrepresented in SIU use-of-force cases and grossly overrepresented in lower-level use-of-force cases that resulted in physical injury (such as bruises and lacerations), but did not rise to the level of the SIU threshold.

This overrepresentation could not be explained by factors such as patrol zones in low-crime and high-crime neighbourhoods, violent crime rates and/or average income. The experts found the results to be consistent with racial bias.

Report for Action: Community Crisis Support Pilot **(2021)**

By: The City of Toronto

[Community Crisis Support Pilot Report]

Online (pdf): https://www.toronto.ca/legdocs/mmis/2021/ex/bgrd/backgroundfile-160016.pdf

At the direction of the Toronto City Council in 2020, the Toronto City Manager was tasked with developing a non-police-led, alternative community safety response model for calls involving persons in crisis. The City Council noted the evidence of disproportionate use of force, invasive searches, and greater surveillance on Indigenous, Black, and equity-deserving communities when law enforcement responded to mental health crises. The City engaged in roundtables with community partners, conducted interviews with subject matter experts, completed public surveys and polls, and reviewed crisis response models in other jurisdictions.

The report proposed piloting a new community crisis support service for some non-emergency calls for service. The service would consist of mobile crisis support teams with a multidisciplinary background and training in crisis intervention and de-escalation. Teams would be dispatched to respond to non-emergency crisis calls and wellness checks. Community health service partners would provide adaptive and service-user-centred care, ensuring that care continues after the initial crisis intervention. The report also provided further information on the consultations and expert feedback. In addition, the report outlined details on the development and implementation of the proposed service. Finally, the report introduced the required legislative changes from the Province of Ontario and provided recommendations for the City to engage in developing regulations under the *Community Safety and Policing Act*.

Missing and Missed: Report of the Independent Civilian Review into Missing Person Investigations (2021)

By: The Honourable Gloria J. Epstein

[Missing and Missed Report]

Online (pdfs): https://tpsb.ca/jdownloads-categories/category/61-missing-and-missed?Itemid=-1

In 2018, during the aftermath of several high-profile cases, an independent review of the TPS was ordered to examine how missing person investigations are conducted in Toronto. In particular, the review would focus on missing person investigations involving LGBTQ2S+ or marginalized and vulnerable communities. Led by the Honourable Gloria Epstein, the review examined the Board and Service's policies, practices, and procedures to determine whether they promote effective and appropriate investigations. In addition, the review re-examined several high-profile cases. Further to this work, the review established a community advisory group, initiated a public outreach and engagement plan, interviewed stakeholders, affected persons and police officials, and commissioned four research papers from leading academics. As a result of these efforts, the review identified that systemic discrimination contributed to the deficiencies in the missing person investigations.

In its findings, the review highlighted key issues including the availability of culturally competent expertise, adequate information-sharing, communication with the public and community engagement, and adequate investigative considerations. The review proposed 151 comprehensive recommendations aimed to improve investigations at a variety of levels. These recommendations included focusing on changes to civilian oversight, case management, community engagement, prevention strategies, communications, relationship building, and professional development.

Rethinking Community Safety: A Step Forward for Toronto (2021)

By: Toronto Neighbourhood Centres in partnership with the Canadian Civil Liberties Association, Black Lives Matter and the Gerstein Crisis Centre, et al

[Rethinking Community Safety Report]

Online (pdf): https://ccla.org/wp-content/uploads/2021/07/Rethinking-Community-Safety-A-Step-Forward-For-Toronto-Full-Report-12.pdf

Service agencies, advocacy groups, and community associations partnered to develop a report addressing community safety issues and reimagining alternatives to policing. At the outset, the report noted the systemic injustices resulting in harm against Black, racialized, and Indigenous communities when policing has been used to address community safety issues. Following recent high-profile cases, the report sought to address the issues in disproportionate policing. The report presented a summary of research and discussions, outlining the key challenges with the existing policing model. The report also identified areas where changes are available to be initiated.

The report identified five areas for immediate action: homelessness, mental health, youth, gender-based violence, and 911 dispatch. The report outlined a number of alternatives, including the expansion of existing programs. Civilian-led community services are the primary focus for these alternatives. The report also made recommendations calling on the City for action in redistributing resources and implementing the necessary programs or alternatives.

ONTARIO

The Report of the Race Relations and Policing Task Force (1989[AL1])

By: The Honourable Justice Clare Lewis and the Race Relations and Policing Task Force

[Race Relations and Policing Task Force Report]

online: https://www.siu.on.ca/pdfs/clare_lewis_report_1989.pdf

In 1988, the Solicitor General of Ontario established the Task Force on Race Relations, appointing the Honourable Justice Clare Lewis as the Chairperson. The Task Force initiated an inquiry into police training, policies, practices, and attitudes as they relate to visible minorities within Ontario. In addition, the Task Force reviewed written and oral submissions from a variety of stakeholders and communities, as well as past reports and inquests. The resulting report found that relations between the police and visible minorities continued to be a critical and pervasive issue in the province.

The Task Force provided 57 recommendations aimed at reforming police services and police service boards. The recommendations directly targeted improvements to police training, policies, practices, and attitudes. For example, the recommendations included establishing visible minority advisory committees to allow communities to discuss issues that directly affect them with chiefs of police. In addition, the Task Force recommended diversifying its employment and recruitment standards to more adequately reflect the communities being served. This included a recommendation to create an Ontario Race Relations and Policing Review Board, which would develop an employment equity policy, equitable recruitment practices, promotion plans, and race relations training.

Report to the Premier on Racism in Ontario (1992)

By: Stephen Lewis

[Lewis Report to Premier]

Online (pdf): www.siu.on.ca/pdfs/report_of_the_advisor_on_race_relations_to_the_premier_of_ontario_bob_rae.pdf

Following the aftermath of riots in Toronto in 1992, former Premier Bob Rae appointed Stephen Lewis as an Advisor on Race Relations to conduct a consultation and issue recommendations. The consultation included over 70 meetings with a variety of community representatives, government officials, and police chiefs. The subsequent report found that racism and systemic discrimination, particularly anti-Black racism, were pervasive issues in many different social areas. These issues were apparent in areas ranging from the criminal justice system to housing, education, and employment equity.

The report issued a number of recommendations in each of these areas. In particular, the report recommended criminal justice reforms including:

- reconstituting the Race Relations and Policing Task Force
- establishing a community-based Monitoring and Audit Board
- amending the *Police Services Act* Regulations on the use of force
- ensuring the independence of the Special Investigations Unit
- re-establishing the Anti-Racism Directorate and renewing its resources

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Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (1995)

By: Margaret Gittens, David Cole, Toni Williams, Moy Tam, Ed Ratushny, Sri-Guggan Sri-Skanda-Rajah

[Ontario Systemic Racism Report]

Online (pdf): https://ia600303.us.archive.org/6/items/reportracismont00comm/reportracismont00comm.pdf

In 1992, the Government of Ontario established the Commission on Systemic Racism in the Ontario Criminal Justice System. The Commission examined the police, courts, and correctional institutions to inquire about the extent to which the criminal justice system reflected systemic racism in Ontario. The Commission conducted consultations, interviews, and empirical studies before releasing its report in 1995. The report provided a broad range of findings including the overrepresentation of Black people in prison, the underrepresentation of Black and racialized persons in the justice system, racial discrimination in police charging, and disparities in sentencing.

The Commission's report highlighted community policing as an alternative solution. The report described effort as a partnership between the police and the community, emphasizing peacekeeping, problem-solving and crime prevention. However, the report noted that members of Black and other racialized communities feel excluded from cooperative partnerships with the police and are concerned that racial equality is

not a part of the community policing agenda. The report provided nine recommendations aimed to improve the delivery of community policing, including establishing local committees and actions plans, alongside a complaints system.

The Commission provided numerous other recommendations ranging from:

- enhancing public accountability of prison practices and publishing guidelines
- consulting with racialized communities on revisions to the *Crown Policy Manual*
- establishing a pilot correctional legal clinic through the Ontario Legal Aid Plan
- diversifying juries through the use of the Ontario Health Insurance Plan database
- amending the *Police Services Act* to expand the Special Investigation Unit.

Paying the Price: The Human Cost of Racial Profiling (2003)

By: The Ontario Human Rights Commission

[OHRC: Paying the Price Report]

Online (pdf): https://www3.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf

In 2003, the Ontario Human Rights Commission (OHRC) launched an inquiry into the effects of racial profiling on individuals, families, communities and society as a whole. The objective of the inquiry was to provide an analysis of how communities are affected by racial profiling and provide a way for persons who have experienced profiling to express how they were impacted. Through these experiences, the OHRC sought to raise public awareness of the harmful effects and social cost of racial profiling. These impacts include detrimental effects on institutions such as the education system, law enforcement, and other service providers, as well as economic loss. The report informed the OHRC's policies and interpretations of the *Human Rights Code* regarding racial discrimination.

In its report, the OHRC proposed recommendations to address racial profiling through actions aimed at raising awareness and mobilizing public action. The OHRC intended to apply these recommendations to all organizations and institutions where racial profiling may arise. These recommendations included actions such as:

- establishing a racial diversity secretariat
- developing organizational policies, practices, and training around racial profiling
- acknowledging racial profiling and adopting a zero tolerance policy
- creating ongoing consultations with communities to facilitate solutions
- collecting data to monitor and identify measures to combat racial profiling.

Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit, Final Report (2006)

By: Scot Wortley

[Wortley: Use of Force 2006 Report]

African Canadian Legal Clinic for submission to the Ipperwash Inquiry at 37 at 6–12 and 37, online (pdf): http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/AfricanCanadianClinicIpperwashProject_SIUStudybyScot

In conjunction with the Ipperwash Inquiry into the death of Indigenous protester Dudley George, Professor Scot Wortley of the University of Toronto prepared a research project for submission on behalf of the African Canadian Legal Clinic. The report focused on police use of force in Ontario, particularly against racial minorities, and it attempted to address gaps in Canadian research. By analyzing data from the province's Special Investigations Unit, outlining a literature review, and meeting with leaders of Toronto's Black communities, the report found evidence of racial bias in police use of force. Specifically, Black and Indigenous people were highly overrepresented in SIU investigations despite comprising only a small percentage of the overall Ontario population.

The report also contributed strategies for controlling police use of force and reducing racial bias in police decision-making. These strategies include:

- introducing use-of-force policies with organizational support
- expanding reporting requirements for any use-of-force incident
- increasing diversity and recruitment screening procedures
- reinforcing training for non-lethal tactics and anti-racism training
- implementing early warning systems for officers with high incident rates.

The Review of the Roots of Youth Violence (2008)

By: The Honourable Roy McMurtry and Dr. Alvin Curling

[McMurtry Youth Violence Report]

online(pdf): https://youthrex.com/wp-content/uploads/2019/05/The-Roots-of-Youth-Violence-vol.-1-Findings-Analysis-and-Conclusions-2008.pdf

Following the fatal shooting of a high school student, former Ontario Premier Dalton McGuinty appointed the Honourable Roy McMurtry and Dr. Alvin Curling to conduct an analysis of the underlying issues of youth violence. Through research and consultation, the review identified multiple risk factors exacerbating youth violence, such as poverty, racism, family issues, and issues in the youth justice system among others. These risk factors were widespread and interconnected. In particular, the review found an excessive reliance on the justice system for minor, non-violent matters resulting in over-criminalization of the youth population. Additionally, the review highlighted that interactions between police and youth, particularly racialized youth, were characterized by undue aggression.

The review provided a number of recommendations aimed at the structural and contextual factors intensifying youth violence. These recommendations were organized under four pillars: a repaired social context; a youth policy framework; a neighbourhood capacity and empowerment focus; and integrated governance. In the criminal justice context, the review recommended establishing a Youth Justice Advisory Board and taking steps to reduce over-criminalization of Ontario youth compared to those in other large jurisdictions.

A Matter of Life and Death: Investigation into the direction provided by the MCSCS to Ontario's police services for de-escalation of conflict situations (2016)

By: The Office of the Ombudsman of Ontario

[Ombudsman 2016 Report]

Online (pdf): https://www.ombudsman.on.ca/Files/sitemedia/Documents/OntarioOmbudsmanDeescalationEN_1.pdf

In 2013, following the fatal shooting of Sammy Yatim, the Ombudsman of Ontario launched an investigation into the police's de-escalation and use of lethal force training. The investigators reviewed the record of police-involved deaths in Ontario, provincial guidelines and directives on the use of force and training, as well as de-escalation theories and best practices domestically and internationally. In addition, the investigators conducted interviews with police officials, mental health experts, stakeholders, and affected families.

The Ombudsman found that use-of-force training is largely focused on the use of weapons with very little focus on communication tools to calm an individual who is armed and experiencing a crisis. Often use-of-force tactics exacerbated the mental state of an individual in crisis. The investigators also found that Ontario police officers receive limited basic training in comparison to other Canadian jurisdictions with little focus on testing for de-escalation techniques. After basic training, de-escalation training is left to the discretion of police services with no monitoring by the Province to ensure consistency between services. Moreover, the investigators found that police culture perpetuated the notion that fatal shootings of persons with mental illness are simply inevitable. In its report, the Ombudsman made 22 recommendations to the Ministry of Community Safety and Correctional Services. The recommendations ranged from addressing legislative guidelines and models, to training at all levels, to better tracking and assessment of police interactions with people in crisis.

Report of the Independent Police Oversight Review (2017)

By: The Honourable Michael H. Tulloch

[Tulloch Report on Police Oversight]

Online (pdf): https://opcc.bc.ca/wp-content/uploads/2017/04/2017-04-06-Report-of-the-Independent-Police-Oversight-Review.pdf

Commissioned by the Government of Ontario in 2016, the Honourable Justice Michael Tulloch began a review of Ontario's three civilian police oversight bodies: the Special Investigations Unit (SIU), the Office of the Independent Police Review Director (OIPRD), and the Ontario Civilian Police Commission (OCPC). Justice Tulloch released a report in 2017, focusing on recommendations to improve the transparency, accountability, and effectiveness of these three bodies. These recommendations aimed to build public trust in law enforcement, ultimately increasing public safety. In addition, the report provided commentary on the role of police services boards serving as a vital component in civilian oversight.

Through public consultations and private meetings, Justice Tulloch found that virtually all stakeholders agreed that the current system for prosecuting public complaints was not working and failed to promote public confidence. The report issued made a number recommendations including:

- enhancing cultural competency training and diversifying oversight bodies
- expanding the SIU's mandate to investigate incidents and publishing their reports
- establishing separate legislation for oversight bodies outside of the *Police Services Act*
- designing a demographic data collection regime to support decision-making.

Under Suspicion: Research and consultation report on racial profiling in Ontario (2017)

By: The Ontario Human Rights Commission

[OHRC: Under Suspicion Report]

Online: www.ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario

In 2017, the OHRC released its research and consultation report, describing the results of a 2015 survey on racial profiling. The OHRC approached the report by combining social science research with the lived experiences of affected communities. This included conducting an online survey, analyzing HRTO applications, conducting focus groups, and holding policy dialogue sessions. By connecting with various communities and stakeholders, the report presented diverse perspectives on the issue. In its findings, the report confirmed that racial profiling is a daily reality that damages communities and undermines trust in public institutions. Further, the report confirmed that racial profiling occurs in many other sectors beyond policing such as education, retail, child welfare, transportation, and national security among other areas. The report noted that participants commonly faced multiple experiences of racial profiling and in more than one sector.

As a result of the report, the OHRC determined it would take undertake a series of steps to address and prevent racial profiling. Specifically, the OHRC sought to develop policy guidance, enhance public education, collaborate with Indigenous communities, call for collection of race-based data, and modify its racial profiling definition based on participant perspectives. While these steps would be taken, the OHRC would also continue to launch inquiries and interventions with a focus on combatting racial profiling in the justice system.

Police Interactions with People in Crisis and Use of Force: OIPRD Systemic Review Interim Report (2017)

By: Gerry McNeilly

[OIPRD Systemic Review Interim Report]

Online (pdf):

https://www.oiprd.on.ca/wp-content/uploads/Police-Interactions-with-People-in-Crisis-and-Use-of-Force-Systemic-Review-Report-March-2017-Small.pdf

After the shooting of Sammy Yatim in 2013 and numerous other public complaints, the Director of the Office of the Independent Police Review (OIPRD) decided to conduct a systemic review of the TPS's use of force when dealing with persons in crisis. The review examined public complaints, complaint investigations, high-profile use-of-force incidents, and past reviews on similar issues. In addition, the OIPRD examined TPS policies, practices, and procedures regarding use of force and equipment, alongside officer training and best practices from other jurisdictions. The review also considered submissions from stakeholders and the public with relevant research and data. In 2017, the OIPRD issued its interim report to document relevant recommendations and stimulate informed discussions with the public and stakeholders, while outlining the next steps of the review.

The interim report documented a range of recommendations based on jury recommendations from a number of coroner's inquests. These were informed by the Honourable Justice Iacobucci's findings in a similar report. The recommendations included changes to the mental health system in Ontario, police culture and recruitment, the use of equipment and weaponry, police supervision, and the use-of-force model. Furthermore, the report included recommendations calling for the expansion of Mobile Crisis Intervention Teams. These teams are collaborative partnerships between participating hospitals and the TPS to respond to an individual's mental health crisis and connect them with appropriate mental health services. Similar programs have been offered throughout Ontario. The interim report concluded that the systemic review would turn to focus on the extent to which the recommendations had been adopted and implemented by police services across the province. The review's final goal was to identify best practices in policing with respect to persons in crisis.

Thunder Bay Police Services Board Investigation – Final Report **(2018)**

By: The Honourable Murray Sinclair

[TBPSB Sinclair Report]

Online (pdf):

https://tribunalsontario.ca/documents/ocpc/TBPSB_Investigation_Final_Report_-_EN-FINAL-1.pdf

Beginning in July 2017, former Senator Murray Sinclair undertook an investigation into the Thunder Bay Police Services Board (TBPSB). First Nations leaders from the Nishnawbe Aski Nation, Grand Council Treaty 3, and the Rainy River First Nations raised concerns about police oversight after a series of incidents of race-based violence against Indigenous peoples in Thunder Bay. The Ontario Civilian Police Commission retained Senator Sinclair to lead an investigation with a particular focus on the relationship between the Thunder Bay Police Service (TBPS) and the Indigenous community.

The final report identified that systemic discrimination against Indigenous peoples was a key issue within the TBPSB. Senator Sinclair reaffirmed that police services boards have a positive obligation to address allegations of systemic discrimination. The findings highlighted the Indigenous community's experiences of racism and patterns of violence, resulting in distrust and fear of the police. Furthermore, the report found systemic issues in the policy and planning framework of the TBPSB, which impacted accountability and oversight mechanisms.

The report made 45 recommendations directed at various levels of the organization. The report recommended, among other things, that the Board:

- Appoint an administrator on an emergency basis while the Board is reconstituted.
- Develop a multi-year recruitment plan for the diversification of the TBPS.
- Develop a compulsory, standard orientation package with ongoing cultural awareness training sessions.
- Adopt principles of reconciliation and establish formal agreements with First Nations governance bodies.

Broken Trust: Indigenous People and the Thunder Bay Police Service **(2018)**

By: The Office of the Independent Police Review Director

[Broken Trust Report]

Online (pdf): http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf.

In 2016, the Office of the Independent Police Review Director (OIPRD) initiated a systemic review of the Thunder Bay Police Services (TBPS). The OIPRD received a number of complaints in prior years about discriminatory conduct during TBPS investigations into the deaths of Indigenous peoples. The Director led a reviewing team to examine 37 investigations focusing on Indigenous deaths, interview 36 individuals from the TBPS, and facilitate meetings with Indigenous leaders and community members.

The OIPRD found that TBPS investigations were affected by racial discrimination and that systemic racism existed at an institutional level within the organization. The report stated that the failure to conduct adequate investigations was, in part, attributable to racist attitudes and racial stereotyping. The OIPRD also noted institutional biases in policies and practices, leading to organizational deficiencies in training and resources.

The report made 44 recommendations aimed at a range of issues, including:

- reinvestigating nine of the TBPS sudden death investigations reviewed by the OIPRD
- ensuring adequate staffing and resources in the General Investigations Unit and establishing a Major Crimes Unit
- re-evaluating missing persons policies and procedures upon review of the National Inquiry into Missing and Murdered Indigenous Women and Girls
- designing and implementing mandatory Indigenous cultural competency and anti-racism training.

Independent Street Checks Review (2018)

By: The Honourable Michael H Tulloch

[Street Checks Review Report]

Online: https://www.ontario.ca/page/report-independent-street-checks-review

In 2017, the Government of Ontario appointed the Honourable Justice Michael Tulloch to lead an independent review of Ontario's Regulation 58/16 (O. Reg. 58/16) regarding streets checks, also known as carding. The scope of the review included an examination of the regulation's content and an assessment of whether officers, chiefs, and police services boards were complying with it. Through extensive consultations and written submissions, the review found that random street checks have little to no verifiable benefits regarding the level of crime, and that many police services had discontinued the practice because of its lack of efficacy.

The review outlined several recommendations to improve the application of the O. Reg. 58/16. In particular, Justice Tulloch recommended that O. Reg. 58/16 expressly stipulate that its purpose or objective is to prevent arbitrary or random stops of individuals. The recommendations went on to further differentiate circumstances under which the police may attempt to collect identifying information from individuals by highlighting a key aspect of O. Reg. 58/16. Specifically, there is a distinction between investigating an offence, which is an exemption under the regulation, and inquiring into suspicious activities and general criminal activities, which fall under O. Reg. 58/16's purview. In addition, the review also made recommendations on the training provided to any police officers attempting to collect identifying information. This included recommendations on how anti-bias and implicit bias training should be designed and implemented.

CANADA / INTERNATIONAL

Racial Profiling and systemic discrimination of racialized youth: Report of the consultation on racial profiling and its consequences (2011)

By: Commission des Droits de la Personne and des Droits de la Jeunesse

[CDPDJ: Racial Profiling Report]

Online (pdf): www.cdpdj.qc.ca/publications/Profiling_final_EN.pdf

Following its previous work in this area, the Commission des Droits de la Personne and des Droits de la Jeunesse launched a public consultation on racial profiling and its consequences with a particular focus on racialized youth from ages 14 to 25. The Commission found that it became apparent that youth are more likely to be targeted by racial profiling due to their use of public spaces, the attribution of certain stereotypes, and their propensity for anti-social behaviour. Furthermore, the Commission recognized that racial profiling persists in many sectors, but chose to focus its report to public services provided by institutions that play a key role in the lives of youth: public security, the education system, and the youth protection system.

Through extensive consultation and research with affected communities and stakeholders, the Commission developed recommendations targeting each sector to prevent and eliminate racial profiling. This included developing relevant policies and actions, initiating data collection regimes, and creating anti-racism training. In the public security sector, the Commission also recommended actions such as:

- reviewing policies to reduce disproportionate deployment of police resources
- reviewing policies on implicit biases while investigating gang-related activities
- amending the *Police Act* to prohibit actions linked to racial profiling
- developing policies prohibiting racial profiling linked to verifying transit fare payments
- establishing anti-profiling watch committees with civil society and city council
- amending the *Police Act* to establish a Special Investigations Bureau for incidents involving officers that result in death or life-threatening injuries.

Investigation of the Ferguson Police Department (2015)

By: U.S. Department of Justice Civil Rights Division

[DOJ: Ferguson Report]

Online (pdf): www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

In 2014, the Civil Rights Division of the US Department of Justice opened its investigation of the Ferguson Police Department (FPD). The investigation revealed a pattern or practice of unlawful conduct within that department that violated the U.S. Constitution and federal statutory law. The investigation included various interviews, on-site reviews, data collection, analysis of police records, and engagement with the local community. The resulting report found clear racial disparities that adversely impacted African Americans and that the evidence showed discriminatory intent behind these disparities. As a result, there is deep mistrust between the community and the police department, which undermines law enforcement legitimacy. Furthermore, the report highlighted that Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs, contributing to the pattern of unconstitutional policing.

The report laid out a number of broad recommendations to the FPD to correct the constitutional violations identified in the investigation. Among those recommendations are calls for increases in training, civilian oversight, and employment equity. The report also recommended:

- implementing a robust system of community policing initiatives
- amending stop, search, ticket, and arrest practices and provisions
- increasing tracking, review, and analysis of FPD stop and search practices
- encouraging de-escalation and minimal use of force through reporting and reviews
- implementing policy and training to respond to physical and mental health crises
- reducing youth criminalization through alternative programs.

Investigation of the Baltimore Police Department (2016)

By: U.S. Department of Justice Civil Rights Division

[DOJ: Baltimore Report]

Online: www.justice.gov/crt/file/883296/download

In 2016, the Civil Rights Division of the U.S. Department of Justice (DOJ) released its report after opening an investigation into the Baltimore Police Department (BPD). The DOJ opened an investigation at the request of the City of Baltimore and BPD, after finding an unlawful

pattern or practice of conduct, violating the U.S. Constitution and federal law. By conducting interviews, facilitating consultations, reviewing police policies, and analyzing data, the DOJ identified four groups of deficiencies:

- unconstitutional stops, searches, and arrests
- disparities in rates of stop and search practices against African Americans
- unreasonable use of excessive force, particularly against individuals with mental health disabilities and youth, and
- retaliation against people engaging in constitutionally-protected expression.

The DOJ presented these deficiencies with general recommendations. These recommendations included actions such as updating policies, establishing robust training programs, and reorganizing infrastructure and capacities. The report recommended community policing as a proactive policing strategy for the BPD to embrace. In its investigation, the DOJ highlighted the department's failure in consistently administering community engagement. The report found that embracing community policing would require the BPD to change its training, principles, policies, and conceptual understanding of its role in the community.

The Civil Rights Division's Pattern and Practice Police Reform Work, 1994– present (2017)

By: U.S. Department of Justice Civil Rights Division

[DOJ: Pattern and Practice Report]

Online: https://www.justice.gov/d9/pages/attachments/2017/01/04/police-reform-report-2017.pdf

The Civil Rights Division (Division) of the U.S. Department of Justice (DOJ) released a report outlining the structure of its pattern-or-practice investigations and their implementation in police reform. The DOJ described pattern-or-practice investigations as a central tool "for accomplishing police reform, restoring police-community trust, and strengthening officer and public safety." Through detailed explanation of the Division's approach to investigations, the report aimed to provide accessibility and transparency to its police reform work. The report also illustrates the Division's model for sustainable reform, common threads among reform agreements, as well as the impact of current work and its future direction.

The report stated that the Division begins pattern-or-practice cases by launching a formal investigation into a law enforcement agency to determine whether the agency is engaged in a pattern or practice of policing which violates the Constitution and federal law. The investigations typically include a comprehensive analysis of the policies and practices of policing in a particular community and focus on systemic police misconduct. If the allegations of misconduct are substantiated, the Division issues its findings in a public report. After this release, the Division negotiates reform agreements, usually in the form of consent decrees, which are overseen by a federal court and an independent monitoring team. These agreements focus on institutional reforms such as improving policies, training, equipment, data collection, and accountability. Once a law enforcement agency has accomplished and sustained the requirements of the reform agreement, the case is finally terminated. Throughout the process, the Division emphasizes engagement with community groups and stakeholders.

Report of the Working Group of Experts on People of African Descent on its mission to Canada (2017)

By: The United Nations General Assembly – Human Rights Council

[UN: Working Group Report]

Online (pdf): https://digitallibrary.un.org/record/1304262/files/A_HRC_36_60_Add-1-EN.pdf?ln=en

By invitation from the Government of Canada, the Working Group of Experts on People of African Descent undertook a mission to Canada in October 2016. The experts met with federal and provincial government officials and their departments. In addition, the experts met with numerous civil society organizations and stakeholders. In their report, the experts found that while Canada had measures to promote diversity and inclusion, it had not introduced special measures for African Canadians. The report noted this absence in light of the disparities, discrimination, and systemic anti-Black racism faced by African Canadians in the enjoyment of their social, economic, and cultural rights. The report highlighted these disparities in various sectors including the criminal justice system, education, health, housing, and employment. The Working Group recognized that these disparities often resulted in multiple and intersecting forms of discrimination.

While the Working Group welcomed Canada's efforts in addressing racial discrimination, the report emphasized the Group's concern about the issues of structural racism and systemic anti-Black racism in Canadian institutions. In particular, the Working Group was concerned about the lack of race-based data and the practice of racial profiling disproportionately affecting people of African descent. Furthermore, the Working Group was concerned about the excessive use of force and police-involved deaths involving vulnerable people of African descent. The report issued a number of recommendations including:

- creating a national department of African Canadians to develop policies
- implementing a nation-wide mandatory policy on collecting disaggregated, race-based data
- eliminating the practice of carding, street checks, and all forms of racial profiling
- auditing police services periodically
- diversifying recruitment in law enforcement and providing unconscious bias training.

Police Violence Against Afro-descendants in the United States (2018)

By: The Inter-American Commission on Human Rights

[IACHR: Police Violence Report]

Online (pdf): https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf

The Inter-American Commission on Human Rights (IACHR) undertook an examination of the structural discrimination against African Americans in the United States, as well as the racial disparities in policing and the criminal justice system. Following recent years of high-profile cases, the IACHR raised concerns about the United States' international human rights obligations. The IACHR drafted this report under its mandate to monitor and promote human rights in the Member States of the Organization of American States (OAS). Through several public hearings held since 2014, the IACHR gathered information from the State, civil society organizations, and victims of police violence. In addition, the IACHR reviewed public reports and visited Florida, Louisiana, and Missouri in 2015. The IACHR considered that the history of enslavement and segregation in the U.S. has continuing repercussions on human rights for African Americans. In this light, the IACHR analyzed numerous issues including over-policing, racial profiling, and excessive use of force.

In its report, the IACHR outlined the United States' positive obligation to adopt measures to build an inclusive society free from all forms of racial discrimination, and called for steps to modify the culture of policing and dynamics between the police and African Americans. The report highlighted that some of these issues may amount to violations of international law such as excessive use of force amounting to cruel, inhuman, or degrading treatment. The IACHR emphasized that the U.S. must take a transformative approach to redress the underlying inequality and ongoing context of racial discrimination. The report proposed recommendations including:

- funding and undertaking studies on racial discrimination in the U.S.
- mandating the monitoring, oversight, and investigation of possible human and civil rights violations by State actors
- creating independent ombudsperson offices at the state and local levels
- establishing a federal database to track incidents involving police use of force by all law enforcement agencies.

Halifax, Nova Scotia: Street Checks Report (2019)

By: Scot Wortley

[Wortley Street Checks Report]

Online (pdf): https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf

The Nova Scotia Human Rights Commission enlisted the expertise of Dr. Scot Wortley, following the release of a report from the Halifax Regional Police (HRP) on race and police "street checks" in 2017. Dr. Wortley was commissioned to conduct an inquiry into the relationship between race and police street checks in the Halifax region by analyzing data collected over 12 years. The inquiry also included a series of consultations with Nova Scotia's Black community, findings from a community survey, and consultations with police officials. Dr. Wortley released his report based on these findings and provided recommendations on the regulation and/or suspension of police street check practices.

In his report, Dr. Wortley analyzed data collected by both the HRP and the Royal Canadian Mounted Police (RCMP) from January 1, 2006 to December 31, 2017. The analysis revealed a number of disparities, including that Halifax had a relatively high street check rate when compared to other Canadian jurisdictions. Most notably, between 2006 and 2012, Black civilians were five times more likely to be subject to a street check despite making up less than 4% of the population. Based on these findings, Dr. Wortley proposed recommendations which included banning street checks and restricting officers' access to historical street check data. Alternatively, if no ban was implemented, Dr. Wortley proposed developing regulations to govern the use of street checks that are consistent with the HRP Code of Ethics and the *Nova Scotia Human Rights Code*.

Systemic Racism in Policing in Canada – Report of the Standing Committee on Public Safety and National Security **(2021)**

By: The House of Commons and Standing Committee on Public Safety and National Security

[Standing Committee: Systemic Racism Report]

Online (pdf): https://www.ourcommons.ca/Content/Committee/432/SECU/Reports/RP11434998/securp06/securp06-e.pdf

In 2021, the House of Commons Standing Committee on Public Safety and National Security (Committee) released a report outlining the pervasive nature of systemic racism in policing and calling for a transformative national effort to prevent such discrimination. The Committee held numerous hearings to capture testimony from representatives of racialized communities, academics, and Canadian police officials. These testimonies described over-policing and under-policing, overrepresentation in criminal justice systems, and intersections between race and mental health. The Committee found that greater accountability, transparency, oversight were critical, along with the collection of race-based data. The Committee also heard calls for changes to the structure and governance of the Royal Canadian Mounted Police (RCMP), improvements in diversity within police services, and reforming the "toxic" culture within the RCMP.

As a result of these hearings, the Committee issued 42 recommendations within its report aimed to fundamentally reform Canadian policing to ensure it is free from racism and other forms of discrimination. These recommendations include among other things:

- strengthening the mandate of the Civilian Review and Complaints Commission of the RCMP
- collecting and publicizing disaggregated race-based data
- creating a National Police College through public consultations to provide training and education for bias-free training
- transitioning the RCMP to a police service model with civilian oversight through a national oversight board and a legislated mandate
- ending contract policing with the RCMP and establishing provincial/territorial police services.

Appendix 5 - Methodology

Data

In March 2017, the OHRC retained Dr. Scot Wortley, PhD (Professor and Graduate Coordinator, Centre for Criminology & Sociolegal Studies, University of Toronto) to provide expert assistance with the Inquiry.[1] His role included analyzing data the OHRC obtained from the TPS and Special Investigations Unit (SIU) for the period from January 1, 2010, to June 30, 2017, as well as survey data related to:

- stop and search practices
- street checks
- use of force
- arrests and charges and forms and conditions of release applied by the TPS for certain categories of offences:
- out-of-sight driving offences
- simple drug possession
- obstructing a police officer, assaulting a police officer, assaulting a police officer to resist arrest, and uttering threats against a police officer
- loitering, causing a disturbance and trespassing

- failing to comply with a bail condition or undertaking to a police officer.

Dr. Wortley was assisted by Dr. Ayobami Laniyonu[2] (Assistant Professor, Centre for Criminology and Sociolegal Studies, University of Toronto) and Erick Laming[3] (PhD student, Centre for Criminology and Sociolegal Studies, University of Toronto) with analyzing use of force data, and by Dr. Maria Jung[4] (Assistant Professor, Faculty of Criminology, Toronto Metropolitan University) with analyzing arrest, charge and release data.

Use of force resulting in serious injury or death

Dr. Wortley analyzed data from two periods: January 1, 2000–June 6, 2006, and January 1, 2013–June 30, 2017. Important information from before January 1, 2013, was not available electronically, so the OHRC restricted its analysis to January 1, 2013 to June 30, 2017.

The 2000–06 data was previously collected and coded by Dr. Wortley in 2006 as part of the Ipperwash Inquiry.[5] The 2013–17 data was collected and coded by the OHRC as part of this Inquiry.

As discussed in *A Collective Impact,* much of the information gathered came from SIU Director's Reports. These reports provided detailed information on each SIU investigation, including the time, date and location of the incident, characteristics of the civilian or civilians involved, the cause of injury or death, a description of the circumstances surrounding the incident, and the justification behind the director's decision to charge subject officers with a criminal offence or clear them of criminal wrongdoing.

During both time periods, the SIU did not collect race-based data. For the 2000–2006 period, race was determined by relying on case photographs, interviews with SIU investigators, SIU investigator notes, and/or photographs of the civilian that appeared in the media. For the 2013–2017 period, race was determined by relying on SIU investigator notes, case photographs, media coverage, social media, and/or TPS documents (e.g., officer notes, General Occurrence Reports, TPS charge documents, incident summaries). Dr. Wortley's analysis included additional factors that could account for use of force, including civilian characteristics (age, gender, etc.) and situational factors (community setting, civilian behaviour, mental illness, civilian impairment, the presence of a weapon, etc.) This analysis is presented in Dr. Wortley's report on race and police of force, *Use of Force: An Examination of Special Investigations Unit Cases Involving the Toronto Police Service* in Appendix E of *A Collective Impact*.[6]

After the release of *A Collective Impact,* the OHRC reviewed the SIU cases received and coded additional variables, including:

- the patrol zone where the incident took place
- whether the person was in possession of a weapon at the time of the incident
- at what point the weapon was discovered
- how the interaction resulting in the use of force was initiated (i.e., through reactive policing, such as response to a call for service, or proactive policing, such as a traffic stop).

Dr. Wortley and his team analyzed these factors to assess whether they could explain the significant racial disparities in the data. Others also raised some of the factors to critically refute the findings in *A Collective Impact*. For details of this analysis, see section E of Dr. Wortley's *Use of Force by the Toronto Police Service: Final Report* (*Use of Force Report*).*[7]*

The OHRC also reviewed SIU Director's Reports for investigations involving Black people from January 1, 2013, to June 30, 2017. These reports contain an incident narrative along with the SIU's analysis. The OHRC identified themes related to the TPS and Black civilians. Examples of cases where these themes were identified in SIU Director's Reports were included in *A Collective Impact* and are also included in this report.[8]

"Lower-level" use of force

The OHRC examined use-of-force incidents that did not result in serious injury or death, and did not meet the threshold for an investigation by the SIU.

Before January 1, 2020, TPS did not collect race-based data on use-of-force incidents. To identify a person's race in lower-level use-of-force incidents, the OHRC and Dr. Wortley examined three types of documents: Use of Force Reports, Injury/Illness Reports and General Occurrence Reports (GO Reports). As Dr. Wortley's *Use of Force Report* sets out in detail, the process for identifying and coding a single lower-level use-of-force case required the OHRC and research team to compile, match and extract information from three separate TPS reports.

Use of Force Reports are completed when an officer:

1. draws their firearm in the presence of a civilian
2. points their firearm at a civilian
3. discharges their firearm
4. uses a police weapon – including a conducted energy weapon – against a civilian
5. uses physical force that results in an injury to a civilian that requires medical attention.[9]

However, they do not contain identifying information about the subject, including their race. Injury/Illness Reports are completed any time police identify an injury or illness in a civilian they have an interaction with, regardless of the cause of the injury, and describe how the person was injured.[10] While Injury/Illness Reports do not contain identifying information about the civilian, including race, they contain a corresponding GO Report number. GO Reports contain a description of the events as well as identifying information for the civilian, which in most cases includes their race.[11]

The OHRC requested Use of Force Reports, Injury/Illness Reports and corresponding GO Reports from the TPS for the period of July 1, 2016–June 30, 2017. These documents were carefully cross-referenced to glean the race of civilians who experienced injuries in their interaction with police.

In collaboration with Dr. Wortley's research team, the OHRC engaged in a labour-intensive matching process. Coders determined whether Injury/Illness Reports were within the scope of the Inquiry (i.e., whether the injury was sustained as a result of use of force by police). For Injury/Illness Reports that were in scope, the coders identified a corresponding GO Report, and attempted to identify a corresponding Use of Force Report by comparing the date and time, type of police assignment, location of the incident, names of the officers involved, type of force used and other details from the case synopsis. Use of Force Reports were not identified in every case. For example, some injuries may have resulted in an Injury/Illness Report being completed, but the severity of the injury did not meet the threshold of needing medical attention that requires a Use of Force Report to be completed.

Once corresponding documents were identified, the information was coded into a data template, with demographic information on the subject including race, type of force used, injuries sustained, patrol zone where the incident took place, and how the interaction that led to the use of force began (i.e., through reactive or proactive policing). A small number of cases in the dataset met the threshold for "serious injury" and were investigated by the SIU, so they also appeared in the SIU dataset and analysis.

Using population estimates from the 2016 Census, Dr. Wortley analyzed the data. Similar to the analysis for use of force resulting in serious injury or death, Dr. Wortley examined factors that could account for use of force such as civilian characteristics (age, gender, etc.), and situational factors (community setting, civilian behaviour, mental illness, civilian impairment, the presence of a weapon, etc.). This analysis is detailed in the *Use of Force Report*.[12]

Dr. Wortley's team also conducted a multivariate analysis. It described whether racial disparities in "lower-level" use of force and use of force that resulted in death or serious injury persisted after controlling for patrol zone characteristics (i.e., violent crime rate, median household income, percentage of single-mother households).[13]

Independent review and error in the multivariate analysis of use of force

Following the release of *A Disparate Impact,* Drs. Wortley and Laniyonu identified a coding error in which civilian race was incorrectly coded in the multivariate analysis. The OHRC (OHRC) retained Dr. Maria Jung[14] to independently review the error. As noted above, Dr. Jung conducted part of the analysis in *Racial Disparity in Arrests and Charges: An analysis of arrest and charge data from the Toronto Police Service*, which was part of *A Disparate Impact*. However, she was not involved in Dr. Wortley's *Use of Force* expert report, which was also part of *A Disparate Impact*.

A Disparate Impact[15] and *Use of Force by the Toronto Police Service*[16] incorrectly stated that when controlling for patrol zone characteristics:

- Black people were 55 times more likely to experience serious and lower-level use of force than White people
- Other racialized people were 13 times more likely to experience serious and lower-level use of force than White people.

The racial disparities in the multivariate analysis decrease significantly when correcting for the error. Further, other racialized people, when grouped together in the data, are now less likely than White people to experience use of force when controlling for patrol zone characteristics.[17] However, there is still a gross racial disparity in the risk that Black people will experience force compared to White people, which remains "consistent with racial bias arguments[:]"[18]

As a result of this independent review, the analysis shows that Black people are markedly more likely to experience all types of police use of force compared to their White counterparts. These gross racial disparities remain after statistically controlling for patrol zone characteristics, including violent crime rate, median household income, and proportion of single-mother households. This is consistent with the conclusions drawn in the original report. However, the extent of racial disparity is smaller in the corrected analysis than the original report. Instead of 30–58 times the risk of experiencing use of force experienced by Black civilians compared to White civilians, as noted in the original report, the results of this corrected analysis show that Black civilians are 4–5 times more likely to experience use of force relative to their White counterparts.

However, for civilians of other racial minority groups, the conclusions from the corrected analysis are substantially different from those drawn in the original report. In the original report, civilians of other racial minority groups were 5–14 times *more* likely to experience use of force compared to their White counterparts, controlling for patrol zone characteristics, including violent crime rate, median household income, and proportion of single-mother households. In the corrected analysis, civilians of other racial minority groups are about 40% *less* likely than their White counterparts to experience use of force, controlling for patrol zone characteristics.

The independent review confirmed that "White civilians were incorrectly coded as Black civilians; Black civilians were incorrectly coded as belonging to some other racialized minority groups; civilians of other racialized minority groups were incorrectly coded as individuals where race could not be identified; and persons whose race could not be identified were coded as White."[19] The error occurred when data was transferred from one statistical analysis program (SPSS) and put it into another statistical analysis program (R).[20]

After discovering the error, Drs. Wortley and Laniyonu reviewed and corrected the expert use of force report. The tables presented in the independent review are "essentially and substantially the same as the corrected series of tables"[21] in the expert use of force report.

The corrected versions of *A Disparate Impact* and the *Use of Force by the Toronto Police Service* are referred to in this final report.

Charges, arrests and releases

The OHRC requested and received data from the TPS Versadex system related to nine specific offences:

1. Failure to comply with a condition, undertaking or recognizance
2. Obstruct justice
3. Assault police
4. Uttering threats against the police
5. Cannabis possession
6. Other (non-cannabis) illegal drug possession
7. Out-of-sight driving offences (including driving without a valid licence, driving without valid insurance, driving while suspended, etc.)
8. Disturbing the peace
9. Trespassing.[22]

As described by Dr. Wortley in *A Disparate Impact,* these charges were selected because research – as well as consultations with both defence counsel and community members – suggest that compared to more serious offences, these charges are more likely to be affected by either police surveillance practices or police discretion.[23] In addition to the listed charges, the OHRC requested information on any accompanying charges, offender release details, and charge disposition. The OHRC also requested information on the person's previous criminal history at the time of each arrest or charge incident. The original request sought this data for the period of 2010–17. In 2013, the TPS switched data systems from the Criminal Information Processing System (CIPS) to Versadex. However, due to limitations associated with the data in CIPS,[24] Dr. Wortley limited his analysis to the Versadex data (2013–17).

The OHRC provided Dr. Wortley with five different datasets. The first included the key charges that were part of the original data request and any accompanying charges associated with the arrest. The second included arrests arising from these charges, and the third provided demographic information (age, gender, race, etc.) on each person involved in the charges and arrests. The fourth included arrest incidents where the person was released on the street on their own recognizance, and the fifth included arrest incidents where the person was taken into custody and transported to the station for "booking."

Dr. Wortley analyzed the data based on the six different racial categories provided by the TPS: White, Black, Asian, Aboriginal, Brown, and Unknown, combining the Asian, Brown and Indigenous categories into a single category labelled "other racial minority."[25] There were 111,972 charges where the race of the alleged offender was known, which amounted to 96% of the charges in the dataset.[26]

The findings of this analysis are presented in Dr. Wortley's report, *Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service.*[27]

Some limitations existed within this data. In some areas, data was missing. Dr. Wortley noted that in 4% of charges, the race of the accused was missing and in 20% of cases the charge disposition was not available.[28] Also, due to communication issues between the TPS and the OHRC, Dr. Wortley was not able to determine if a person was booked but released at the police station or detained for a "show cause" hearing and thus, Dr. Wortley did not analyze disparities in this area. Dr. Wortley was also unable to analyze other arrest details, including whether the suspect was strip-searched, photographed, fingerprinted, or booked into a holding cell, as these fields were not mandatory and often missing from the data.[29] Finally, in response to the OHRC's request for all criminal offender histories at the time of the arrest, the TPS only provided charge history information from after 2013, and did not provide information on charges and convictions related to other police services.[30] Dr. Wortley noted this "renders the criminal history information provided by the TPS useless with respect to conducting an analysis of all factors that may impact post-arrest treatment."[31]

Addendum report: additional benchmarking of TPS use of force and charge data

Drs. Wortley and Laniyonu supplemented the census benchmarking or general population benchmarking of use force and charges from *A Disparate Impact* by including additional benchmarking based on additional data obtained by the OHRC from the TPS. This is done in their Addendum report.

Census or general population benchmarking "captures the overall impact of police use of force on racialized communities". According to Dr. Wortley:[32]

Proponents maintain that general population benchmarking reveals the likelihood that people from different racial backgrounds will experience police contact and/or a police use-of-force incident. A growing number of researchers recognize that census benchmarking is a valuable first step in the research process and that it serves to effectively document the extent to which different racial groups experience different types of police contact.

Dr. Wortley also acknowledged that that, "while general population benchmarking may highlight the over-representation or under-representation of racialized people in use of force statistics, these statistics may not completely explain racial disparities."[33]

Drs. Wortley and Laniyonu performed additional benchmarking of use of force data using race-based data on:[34]

- Street checks (2008-2013)

- Arrests (2014-2017), including:
  - Total arrests
  - Arrests for property crime
  - Arrests for violent crime
  - Arrests for aggravated assault
  - Arrests for homicide
  - Arrests for attempted homicide
  - Arrests for firearms offences.

This addresses arguments that, for example[35]:

- "Racial groups with high levels of contact with the police are at greater risk of experiencing police violence than those with lower levels of contact than those with lower levels of contact."
- "Those who have broken the law – and targeted for arrest – are at especially high risk of police use of force."
- "Violent offenders (i.e., those involved in arrests for violent crime) are more likely to demonstrate "resistance" to the police and are thus particularly vulnerable to police use-of-force incidents."

Dr. Wortley noted that "racial bias contributes to racial disparities in arrest statistics in several ways" and thus, highlighted research which states that "benchmarking use of force data to arrest data likely underestimates the level of bias that may exist in police use of force." Similarly, Dr. Laniyonu stated:[36]

Black persons in Toronto are grossly over-represented in TPS street checks and arrests. This overrepresentation is almost certainly a consequence, at least in part, of racial bias among TPS officers. Overall, this means that benchmarking on street checks and arrests should be considered conservative estimates of racial disparities.

Dr. Wortley drew upon data from the 2016 Canadian Census that captures the "number of Toronto residents who drive to work using a car, truck, or other personal motor vehicle." According to Dr. Wortley, "commute to work estimates may be considered superior to population

benchmarks because they better capture the driving population (i.e., those who are of the legal driving age and have access to a motor vehicle)" but they are "not without their limitations" (e.g., they don't capture people who use a car frequently for leisure purposes or to go to school).[37]

Finally, Dr. Wortley supplemented the analysis of race-based data on failure to comply charges using TPS race-based arrest statistics as a benchmark. This addresses arguments that benchmarking failure to comply charges using general populations statistics "does not capture the population 'at risk' of facing failure to comply offences."[38]

Street checks, stops, and searches

Dr. Wortley examined TPS street checks, stops and searches in his expert report, *Racial Profiling and the Toronto Police Service: Evidence, Consequences and Policy Options* (see Appendix 2).[39]

The street check data consisted of pre-regulated street checks and regulated interactions from 2008 to 2019. The pre-regulated street checks were from 2008 to 2013. Only cases where the officer recorded the race of the carded person were included in his analysis. This data includes the person's name and home address, the reason for the stop, the location and time of the encounter, the person's age, gender and skin colour, and often information on the person's associates (i.e., individuals accompanying the subject civilian) and specific comments about the encounter with police. Dr. Wortley broke down the data by race, analyzing the results for Toronto residents, controlling for things such as people who have been stopped on multiple occasions, incidents involving young males aged 15 to 24, and the reason for the stop.[40]

He did a similar analysis for TPS data for 2014. There was no street check data for 2015 and 2016 as the TPS declared a moratorium on street checks. Dr. Wortley used population estimates from the 2006 Census for his analysis of data from 2008 to 2013, and population estimates from the 2016 Census in his analysis of data from 2014 to 2019[41].

Dr. Wortley examined TPS statistics on Regulated Interactions under Ontario's street checks regulation, *Collecting Identifying Information in Certain Circumstances*,[42] for 2017 to 2019.[43]

Dr. Wortley also compared the street check data from Toronto to data from other Ontario cities, including Peel, Ottawa, London, Kingston and Hamilton, and analyzed the impact of gender.[44]

Dr. Wortley examined qualitative research and survey data on stops and searches in Toronto, including:

- The Toronto Guns and Youth Violence Project, which involved "in-depth interviews [from 2018 and 2019] with 492 young people, 16–24 years of age, residing in economically disadvantaged, high-crime communities within the City of Toronto."[45]
- Smaller-scale qualitative studies conducted since 2017 and the enactment of Ontario's street check regulation. The studies focus on Black youth from "disadvantaged communities."[46]

Dr. Wortley re-analyzed data from the *Black Experience Project* (Environics Institute 2017) – a 2015 survey that explored the opinions of 1,504 Black residents, 16 years or older, from the Greater Toronto Area.[47]

Dr. Wortley's also examined two surveys conducted from 2017 onwards:

- *Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey*, commissioned by the Toronto Police Services Board and conducted in 2017. The report described the results of a survey of 1500 people.[48]
- *Race and Criminal Injustice: An examination of public perceptions of and experiences with the Ontario criminal justice system*, a survey conducted in 2019 and commissioned by the Canadian Association of Black Lawyers (CABL), Legal Aid Ontario and the Lincoln Alexander School of Law. The report described the results of a 2019 Environics survey of 1,450 residents, aged 18 or over from the Greater Toronto Area (GTA).[49]

Review of case law

The OHRC examined case law, including appellate jurisprudence and decisions from the criminal and civil courts.

Appellate jurisprudence on key concepts related to anti-Black racism, systemic racism, and systemic racial discrimination is discussed in Chapter 3 – Anti-Black racism in policing in Toronto.

In Chapter 9 – Accountability and monitoring mechanisms: gaps in data management, performance review and public transparency, the OHRC identified:

- case law with explicit findings of racial profiling or racial discrimination of Black people by TPS officers
- criminal cases with *Charter* violations that did not assess whether there was racial profiling or racial discrimination but where an inference may be drawn that race was a factor. The cases identified by the OHRC are not exhaustive of criminal cases that may support an inference of racial discrimination or racial profiling of Black people by the TPS.

Review of policies and procedures

The OHRC requested policies, procedures, and training documents that existed from 2010 to 2017 from the TPS and the TPSB.[50] The OHRC received and reviewed TPS and TPSB documents relating to charge, arrests and releases, stop and search activities, use of force, and anti-racism initiatives.

The OHRC also requested some updated and additional documents, particularly if they were relevant to potential recommendations. The TPS and TPSB provided these documents for the most part. The only exceptions were:

- The incomplete draft report on the evaluation of the Police and Community Engagement Review (PACER)
- TPS analysis of the data requested by the OHRC in the context of this Inquiry
- Signed acknowledgements confirming that the OHRC's interview notes reflected the content of the interviews from:
- Mark Saunders, former Chief of the TPS
- Myron Demkiw, then-Staff Superintendent of Corporate Risk Management.

The OHRC analyzed the documents in light of research on best practices, human rights case law, legislation and regulations, and recommendations made by previous inquests and reports, such as the coroner's inquest into the death of Andrew Loku.[51] This analysis included identifying positive and negative components of the policies, procedures and training, and identifying areas for further improvements. The OHRC also identified areas where further information was required, and then posed these questions to both the TPS and TPSB.

Outreach to TPS officers and the TPSB

At the launch of the Inquiry, the OHRC committed to receiving information from affected individuals, groups and organizations, including TPS officers.

The OHRC provided an email to the TPS in December 2019, and an updated version was sent to all officers in March 2021, inviting them to share their thoughts on the Inquiry and related areas such as:[52]

- training, policies and procedures, and performance management related to racial profiling and racial discrimination
- the relationship between the TPS and Black communities
- the culture of the TPS as it might contribute to racial discrimination.

Only five officers agreed to be interviewed or provided detailed feedback.

The OHRC conducted a confidential and voluntary online survey of TPS uniform officers below the rank of inspector. The survey was open between October 12 and 26, 2022. Officers were invited to share their perspectives on issues of racism, particularly anti-Black racism, both within the TPS and with respect to officer interactions with civilians. The TPS supported the survey and provided a description and link to the survey to all officers and civilian staff by internal email and on the TPS Intranet.

The OHRC received 113 responses to the survey. An additional 152 survey responses were excluded from the analysis: 11 respondents declined to provide their consent for the OHRC to collect their survey responses, 110 respondents declined to provide name or badge number to participate in the survey, and 31 respondents were disqualified because they were not uniform officers below the rank of inspector of the TPS[53].

The OHRC interviewed uniform and civilian members of the Black Internal Support Network (BISN), an affinity group of the TPS, to learn about their experiences of anti-Black racism within TPS, police culture, training, policies, procedures, accountability mechanisms relating to racial profiling and discrimination, and the relationship between the TPS and Black communities. A Chief's direction (649 memorandum) was

issued, which allowed the OHRC to reach out to BISN members directly and that no disciplinary action would be taken based on the interviews.

The OHRC also reached out to officers through a public call at the launch of the Inquiry and interviewed two former and one current officer through this process.

The OHRC conducted interviews with members of the TPS senior command about policies and procedures, anti-racism initiatives, accountability mechanisms, and responses to reports, to understand how TPS procedures are operationalized. The OHRC provided the TPS with a list of question areas and any documents that would be referenced in the interview in advance. Interviews were conducted with the following persons. Their titles below reflect their positions at the time of the interview[AL1] :

- Superintendent Domenic Sinopoli, Professional Standards Unit
- Deputy Chief Shawna Coxon, Communities and Neighbourhoods Command
- Deputy Chief Peter Yuen, Primary Response Command
- Inspector Stacy Clarke, 14th Division
- Deputy Chief Barbara McLean, Human Resources Command
- Suelyn Knight, Manager, Equity, Inclusion and Human Rights Unit
- Staff Superintendent Myron Demkiw, Corporate Risk Management
- Superintendent Christopher Kirkpatrick, Toronto Police College
- Chief Mark Saunders
- Dana Styra, Manager, Audit and Quality Assurance Unit
- Staff Superintendent Robert Johnson, Strategy and Risk Management
- James Cornish, Strategic Advisor to the Chief
- Staff Superintendent Peter Code, Professional Standards Unit
- Inspector Andrew Ecklund, Equity, Inclusion and Human Rights Unit
- Colin Stairs, Chief Information Officer, TPS
- Ian Williams, Director of Information Management, TPS
- Superintendent Frank Barredo, Toronto Police College
- Chief James Ramer.

The OHRC also interviewed Peter Duncan, an Instructor at the Toronto Police College.

Where questions could not be answered during the interview, the OHRC followed up in writing and the TPS provided a response. The OHRC also received written responses to questions from Ian Williams, Manager of Analytics and Innovation.

The OHRC provided the TPSB with a list of questions about its policies and procedures, anti-racism initiatives, accountability mechanisms and responses to reports. The TPSB provided answers in writing.

Interviews with the TPSB included:

- Uppala Chandrasekera, former TPSB board member, fomer co-chair of the TPSB's Anti-Racism Advisory Panel, and former member of the TPSB's Mental Health and Addictions Advisory Panel
- Ryan Teschner, former Executive Director and Chief of Staff, TPSB
- Jim Hart, then-Chair of the TPSB.[D(2]

The OHRC also interviewed Notisha Massaquoi, former community co-chair of the TPSB's Anti-Racism Advisory Panel, and Steven Lurie and Jennifer Chambers, community co-chairs of the TPSB's Mental Health and Addictions Panel (MHAAP).

Review of TPS accountability mechanisms

The OHRC compiled a list of eight HRTO and court cases decided between 2009 and 2017 where there was a finding of racial profiling or racial discrimination. The OHRC also identified four court decisions where judges did not assess whether there was racial profiling or racial discrimination, but an inference may be drawn that there was racial profiling or racial discrimination of Black people based on the findings of the judges.

The OHRC made a request to the TPS for any notices of hearing or decisions of the TPS Disciplinary Tribunal,[54] and any records on minor unit-level counseling or remedial training that were not referred to the Chief's office or Professional Standards Unit, associated with the conduct referred to in these cases.

More broadly, the OHRC also asked for the number of officers who were disciplined for engaging in racial discrimination, racial harassment, or racially-biased policing since 2010, and for any resulting decisions of the TPS Disciplinary Tribunal.

Finally, the OHRC reviewed the SIU Director's letters to the Chief of Police from 2013 to 2017 arising from SIU investigations where the SIU Director raised concerns about potential police misconduct or problems with the investigation. The OHRC identified 27 cases of potential officer misconduct flagged by the SIU Director. The OHRC identified three cases which raise concerns of racial profiling or racial discrimination of Black people. The letters to the Chief do not state that the civilians are Black, and the SIU did not expressly raise concerns of racial profiling or racial discrimination in the letters.

The OHRC asked the TPS to provide any decisions of the TPS Disciplinary Tribunal and any Notices of Hearing for the TPS Disciplinary Tribunal associated with the misconduct flagged by the SIU Director in the letters to the Chief.

Outreach to Black communities

The OHRC committed to "receive information from affected individuals, interested groups and organizations."[55] Recognizing the diversity within Black communities, the OHRC put out a public call for organizations and individuals to discuss their experiences of anti-Black racism involving the TPS. A dedicated phone line and email were set up to receive submissions. The OHRC conducted follow-up interviews in person and by phone with people who reported experiences within the scope of the Inquiry.

On the advice of Black community leaders, the OHRC also worked with several organizations that serve Black communities and/or challenge anti-Black racism, to hold focus groups and gather experiences of Black persons with the TPS that fell within the scope of the inquiry. This included asking individuals and organizations how the Toronto police should address anti-Black racism.

Organizations that assisted with outreach included:

- Across Boundaries
- Black Action Defense Committee
- Black Legal Action Centre
- Black Muslim Initiative
- Colour of Poverty – Colour of Change
- Canadian Association of Black Lawyers
- Canadian Civil Liberties Association
- Centre Francophone du Grand Toronto
- Community Legal Aid Services Program of Osgoode Hall Law School
- For Youth Initiative
- Human Rights Legal Support Centre
- Jamaican Canadian Association
- Midaynta Community Services
- Ontario Justice Education Network
- Provincial Advocate for Children and Youth and HairStory (have since been discontinued)
- Rathburn Area Youth Program
- Rexdale Community Hub
- Rexdale Community Legal Clinic
- Success Beyond Limits.
- Urban Alliance on Race Relations

The OHRC met with approximately 190 individuals from Black communities, including in Malvern, Central Etobicoke, Jane and Finch, and York South-Weston. The majority spoke to the OHRC as part of focus groups that were co-organized with these organizations, which identified and reached out to the participants. The OHRC also arranged further meetings with individuals who wanted to share their stories outside of focus groups.

The OHRC also consulted with Black community leaders on its recommendations to the TPS and TPSB. The questions for each consultation were tailored to the knowledge and expertise of each community leader/organization. Leaders included:

- Fareeda Adam (Staff Lawyer, Black Legal Action Centre)
- Jacqueline Edwards (President, Association of Black Law Enforcers)
- Louis March (Founder, Zero Gun Violence)
- Samantha Peters (lawyer, researcher and educator at the University of Ottawa Faculty of Law)
- Aseefa Sarang (Across Boundaries)

- Dr. Sam Tecle (Jane-Finch Action Against Poverty/New College U of T)
- Lori Anne Thomas (who spoke with the OHRC as then-president, Canadian Association of Black Lawyers, before being appointed as to the Ontario Court of Justice) and Jaqueline Beckles (Secretary, CABL)
- Brittany Amofah (Board member, Urban Alliance on Race Relations)

Review of ongoing and post-2017 TPS and TPSB initiatives

The OHRC reviewed ongoing and post-2017 TPS and TPSB initiatives designed to address racism in police services. Initiatives included:

- the TPSB's 2020 *Police Reform* Report[56] and the implementation of its recommendations
- 2020-2022 training on anti-Black racism that was part of the In-Service Training Program
- policies and procedures re artificial intelligence, body-worn cameras and race-based data collection, analysis, and reporting
- the TPS's report on its analysis of 2020 race-based data on use of force and strip searches released in 2022, which included 38 action items.[57]

This final report's references to TPS and TPSB initiatives and materials are current as of the time of writing, which is July 2023. However, we acknowledge that the TPS or TPSB may have updated relevant initiatives or undertaken new ones that are not reflected in this report.

The policy roundtable

In May 2022, the OHRC, TPS and TPSB held a policy roundtable to discuss important issues identified during the inquiry, and to consider recommendations for change. Participants included members of Black communities, government, academic, policing, and other stakeholders. Issues explored included: discipline, data collection, training, and education; the nature and extent of discriminatory exercise of discretion and the role of Crown counsel; use of force; accountability and enforcement mechanisms.

Participants are listed below. Their titles reflect their positions at the time of interview[AL3] :

- Jacqueline Edwards, President, Association of Black Law Enforcers
- Matt Torigian, Distinguished Fellow, Munk School of Global Affairs & Former Chief of Police for Waterloo Regional Police Service
- Patricia Kosseim, Ontario Information Privacy Commissioner
- Dr. Sam[AL4] Tecle, Assistant Professor of Sociology, Toronto Metropolitan University
- David Bosveld, Founder, Black Education Fund
- Ryan Teschner, Executive Director & Chief of Staff, TPSB
- Nishan Duraiappah, Chief, Peel Regional Police
- James Cornish, Strategic Advisor, TPS
- Larry Vieira, General Legal Counsel, Toronto Police Association
- Sarah Caldwell, Director of Community Safety and Intergovernmental Affairs, Ontario Ministry of the Solicitor General
- Moya Teklu, Executive Director, Black Legal Action Centre
- Nadia Gouveia, Acting Chief Operating Officer, Toronto Community Housing
- Clinton Reid, Founder, Collective Impact
- Kike Ojo-Thompson, EDI Consultant, Executive Director of KOJO Institute
- Stephen McCammon, Legal Counsel, Ontario Information Privacy Commission
- Todd Foglesong, Fellow-in-Residence, Munk School of Global Affairs & Public Policy
- Ainsworth Morgan, Co-Chair, TPS Anti-Racism Advisory Panel
- Antje McNeely, Chief, Kingston Police Service
- Andy Marsh, Chief Constable and Chief Executive Officer, UK College of Policing
- Danielle Dowdy, Senior Advisor, TPSB
- Nigel Barriffe, President, Urban Alliance on Race Relations
- Stephen Leach, Ontario Independent Police Review Director
- Paula Di Nota, PhD, Post-Doctoral Research Fellow, University of Toronto
- Andrew Locke, Director of Crown Operations, Ontario Ministry of the Attorney General
- Anthony Odoardi, Deputy Chief, Peel Regional Police
- Declan Sullivan, Program Associate, Georgetown Law Center for Innovations in Community Safety
- James Ramer, Chief, TPS
- Ian Williams, Director of Information Management, TPS

- Jon Reid, President, Toronto Police Association
- Anthony Morgan, Co-Chair, TPS Anti-Racist Advisory Panel
- Paul Bailey, Executive Director, Black Health Alliance
- Abby Deshman, Lawyer & Director of the Criminal Justice Program, Canadian Civil Liberties Association
- Jennifer Chambers, Executive Director, Empowerment Council
- Myron Demkiw, then-Acting Deputy Chief, TPS
- Stephen Menseh, Executive Director, Toronto Youth Council
- Dan Kinsella, Chief, Halifax Regional Police
- Jim Hart, Chair, TPSB
- Ken Weatherill, Inspector of General Policing, Ministry of the Solicitor General
- Roy Austin Jr. (Vice President of Civil Rights, Deputy General Counsel & former Deputy Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice.

The OHRC conducted follow-up interviews with the following roundtable participants to gather additional information and perspectives:

- Stephen McCammon, Counsel, Information and Privacy Commissioner of Ontario
- Andrew Locke, Director of Crown Operations (Toronto Region)
- Stephen Leach, Independent Police Review Director
- Nana Yanful, Legal Director of Black Legal Action Centre
- Andy Marsh, CEO of the College of Policing, England and Wales
- Todd Foglesong, Fellow-in-Residence, Munk School of Global Affairs & Public Policy
- Anthony Morgan, Manager, Confronting Anti-Black Racism Unit, City of Toronto.

Prior to the roundtable, the OHRC also interviewed Joseph Martino, Director of the Special Investigations Unit.

OHRC visit to the Toronto Police College

On March 23, 2023, the OHRC was invited to attend a full day of training at the Toronto Police College (TPC). The TPC provided samples of training sessions that TPS officers receive in their In-Service training.

Samples included classroom lectures on Anti-Black racism and de-escalation, firearms training, judgement training scenarios which involved virtual interactions, and dynamic simulations involving interactions with live actors.

Members of the OHRC actively participated in each of the sample components of training. Following this visit, the TPC provided the OHRC with additional materials related to their 2023 In-Service training.

OHRC recommendations

The OHRC researched best practices from Canada, the U.S., and the U.K. to identify, monitor, and address racial profiling, racial discrimination and anti-Black racism in policing, including recommendations made by previous inquests and reports, such as the coroner's inquest into the death of Andrew Loku.

The OHRC's recommendations apply the principles set out in its *Policy on eliminating racial profiling in law enforcement*.[58] They were developed in consultation with Black communities and organizations, Black community leaders, experts, the TPS, TPSB, and TPA. Input was also provided by Dr. Wortley and Senator Gwen Boniface, former Commissioner of the Ontario Provincial Police.

Some of the OHRC's recommendations require provincewide action, while others can be acted upon by the TPS and TPSB.

Appendix 5 Endnotes

[1] Dr. Wortley has been qualified as an expert by the Ontario Superior Court of Justice, Canadian Human Rights Tribunal and Human Rights Tribunal of Ontario – see *Smith v Canada Customs and Revenue Agency,* [2004] OJ No 3410 at para. 70; *R. v Douse*, [2009] OJ No 2874 at para 104; *Tahmourpour v Canada (RCMP)*, [2008] C.H.R.D. No. 10 at para 31; *Nassiah v Peel (Regional Municipality) Services Board,* 2007 HRTO 14 at para. 23; *Maynard v Toronto Police Services Board,* 2012 HRTO 1220 at paras 139 and 142; See also "Faculty Directory: Scot Wortley," online: *University of Toronto* www.crimsl.utoronto.ca/people/directories/all-faculty/scot-wortley.

[2] "Faculty Directory: Ayobami Laniyonu," online: *University of Toronto* www.crimsl.utoronto.ca/people/directories/all-faculty/ayobami-laniyonu.

[3] "Faculty and Research: Erick Laming," online: Trent University https://www.trentu.ca/criminology/faculty-research/erick-laming.

[4] "Faculty Directory: Maria Jung," online: *Toronto Metropolitan University* https://www.torontomu.ca/criminology/people/faculty-directory/jung-maria/.

[5] Scot Wortley, "Police use of Force in Ontario: An Examination of Data from the Special Investigations Unit, Final Report" (2006). Research project conducted on behalf of the African Canadian Legal Clinic for submission to the Ipperwash Inquiry, online (pdf): www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/AfricanCanadianClinicIpperwashProject_SIUStudybyScotWortley.pdf.

[6] OHRC, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (2018) at 78–79, online: *OHRC,* www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[7] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 116–124, online: OHRC www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[8] OHRC, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service* (2018) at 21–25, online: OHRC www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[9] RRO 1990, Reg 296, s 15.5(1).

[10] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 87, online: OHRC www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[11] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 87–88, onlineOHRCwww.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[12] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 98–115, online: www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[13] OHRC, *A Disparate Impact Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 116–125, online: www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[14] Dr. Maria Jung is an Assistant Professor in the Department of Criminology of Toronto Metropolitan University. Among other courses, she teaches advanced qualitative and quantitative research methods and has expertise in multivariate analysis. Her work on race and the criminal justice system has been published in peer-reviewed journals*;* www.torontomu.ca/criminology/people/faculty-directory/jung-maria/ .

[15] OHRC, *A Disparate Impact* (August 2020), "Alternative explanations," online: OHRC www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[16] Scot Wortley et al., *Use of Force by the Toronto Police Service: Final Report* (July 2020) at 116–126, online (pdf): OHRC

www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[17] Maria Jung, Independent Expert Review of the Data, Analysis, and Conclusions of "Part E: Multivariate Analysis of Use of Force Cases" of the Use of Force by the Toronto Police Service report (December 2022). Online: https://www.ohrc.on.ca/en/correction-disparate-impact

[18] Maria Jung, Independent Expert Review of the Data, Analysis, and Conclusions of "Part E: Multivariate Analysis of Use of Force Cases" of the Use of Force by the Toronto Police Service report (December 2022) at 10 online: https://www.ohrc.on.ca/en/correction-disparate-impact

[19] Maria Jung, Independent Expert Review of the Data, Analysis, and Conclusions of "Part E: Multivariate Analysis of Use of Force Cases" of the Use of Force by the Toronto Police Service report (December 2022) at 2-3, online: https://www.ohrc.on.ca/en/correction-disparate-impact

[20] Maria Jung, Independent Expert Review of the Data, Analysis, and Conclusions of "Part E: Multivariate Analysis of Use of Force Cases" of the Use of Force by the Toronto Police Service report (December 2022) at 3 online: https://www.ohrc.on.ca/en/correction-disparate-impact

[21] Maria Jung, Independent Expert Review of the Data, Analysis, and Conclusions of "Part E: Multivariate Analysis of Use of Force Cases" of the Use of Force by the Toronto Police Service report (December 2022) at 3 online: https://www.ohrc.on.ca/en/correction-disparate-impact

[22] OHRC, Terms of Reference, Inquiry into racial discrimination and racial profiling of Black persons by the Toronto Police Service, (30 November 2017), online: www.ohrc.on.ca/en/terms-reference-tps; see Appendix 7 - Terms of Reference.

[23] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 11, online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[24] For example, the CIPS data was provided in 15 datasets that had to be cleaned, sorted and merged.

[25] In *Use of Force by the Toronto Police Service*, Dr. Wortley stated that Asian, Brown and Indigenous racial categories were combined into a single racial category called "other racial minority" because:

"First of all, although we can conclude that the "Brown" category is "non-White," we cannot use it to benchmark a specific racial group. Secondly, the focus of the inquiry is anti-Black racism. Thus, the following analysis focuses on how Black people are treated compared to their White and "other racial minority" counterparts. Finally, a more refined analysis, including the Indigenous, Brown and Asian categories, shows that these groups are either under-represented in TPS arrests (Asians and Brown people) or represented at a level that is equal to their presence in the general population (Indigenous people). Therefore, as the following analysis will reveal, Black people are the only racial group that is significantly over-represented in the charge statistics that are the focus of this inquiry."

OHRC, *A Disparate Impact Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Use of Force by the Toronto Police Service Report* (2020) at 15 online (pdf) www.ohrc.on.ca/sites/default/files/Use%20of%20force%20by%20the%20Toronto%20Police%20Service%20Final%20report.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[26] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 15, online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[27] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 108-115, online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[28] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 12, online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[29] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 12 online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[30] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 12-13 online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black.

[31] OHRC, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service, Documenting Racial Disparity: An analysis of arrest and charge data from the Toronto Police Service* (2020) at 12–13, online (pdf): www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20….

[32] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 3-4.

[33] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 3-4.

[34] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022)

[35] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 4.

[36] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 13-14.

[37] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 23-24

[38] Scot Wortley and Ayobami Laniyonu, "Addendum report: Additional benchmarking of TPS use of force and charge data" (November 2022) at 31-32

[39] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021).

[40] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options*, OHRC (September 2021) at 36-56.

[41] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 36-56.

[42] O Reg 58/16.

[43] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 36-56.

[44] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 36-56.

[45] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 56–57

[46] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 21.

[47] See Appendix 2, Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 30-35.

[48] Gervan Fearon and Carlyle Farrell, *Perceptions of the Toronto Police and the Impact of Rule Changes Under Regulation 58/16: A Community Survey* (Toronto Police Services Board, 2017)..

[49] CABL, "Race and Criminal Justice: New report from CABL, Ryerson's Faculty of Law and the University of Toronto confirms significant racial differences in perceptions and experiences with the Ontario criminal justice system" (10 February 2021), online: https://cabl.ca/race-and-criminal-injustice-new-report-from-cabl-

ryersons-faculty-of-law-and-the-university-of-toronto-confirms-significant-racial-differences-in-perceptions-and-experiences-with-the-ontari/; See Appendix 2 Scot Wortley, *Racial profiling and the Toronto Police Service: Evidence, consequences and policy options* OHRC (September 2021) at 58-59.

[50] OHRC Inquiry letters to the Toronto Police Service and Toronto Police Services Board, Inquiry into racial discrimination and racial profiling of Black persons by the Toronto Police Service (30 November 2017). See Appendix 10.

[51] Office of the Chief Coroner, Jury Recommendations *Inquest into the death of Andrew Loku* (30 June 2017) at recommendations 1 and 8.

[52] Letter from the Ontario Human Rights Commission to Toronto Police Services Uniform Members – The Ontario Human Rights Commission (OHRC) wants to hear from you (3 March 2021).

[53] For more information about the survey, please see Chapter 4 – Consultations with Black communities, community agencies, and police.

[54] Cases that proceed to the TPS Disciplinary Tribunal originate from public complaints of officer misconduct to the Office of the Independent Police Review Director or internal complaints.

[55] OHRC Terms of Reference, Inquiry into racial discrimination and racial profiling of Black persons by the Toronto Police Service (30 November 2017), online: www.ohrc.on.ca/en/terms-reference-tps; See Appendix 7.

[56] TPSB, *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety* (2020), online: https://tpsb.ca/jdownloads-categories/send/32-agendas/631-august-18-2020-agenda. TPSB, *Police Reform Implementation Dashboard*, online: https://tpsb.ca/consultations-and-publications/policing-reform-implementation.

[57] TPS, *Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 – Detailed Report* (June 2022) at Appendix A – Action Plan, online: (pdf): www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

[58] OHRC, *Policy on eliminating racial profiling in law enforcement* (2019), online: www.ohrc.on.ca/en/policy-eliminating-racial-profiling-law-enforcement.

Appendix 6 - Historical Timeline

Timeline of events related to issues of racial discrimination and racial profiling of Black persons by the Toronto Police Service, and OHRC initiatives related to the Toronto Police

Note: With the exception of Sammy Yatim, all of the victims included below were Black.

This is not an exhaustive list of incidents and activities. For the purposes of this document, the OHRC is not making any findings of racial profiling or racial discrimination relating to any of these events

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1978

- Andrew "Buddy" Evans, 24, was killed by a Toronto Police officer at a nightclub on King Street West. A coroner's inquest did not find wrongdoing on the officer's part.

1979

- Albert Johnson, 35, was shot and killed in his apartment by two Toronto Police officers. The officers were both charged with manslaughter, but were acquitted in November 1980.

- Michael Sargeant was killed by a Toronto Police officer.

1985

- Leander Savoury was killed by a Toronto Police officer.

1988

- Lester Donaldson, 44, was shot and killed in his rooming house by a Toronto Police officer. The police said they were responding to a call of a man holding hostages, but found Donaldson alone in his room. He was shot for allegedly lunging at the officer with a knife. The officer was charged with manslaughter, but was later acquitted.

- Dudley Laws, Charles Roach, Sherona Hall, and Lennox Farrell founded the Black Action Defence Committee, in response to police shootings of Black people.

- The Ontario government created the Race Relations and Policing Task Force in response to the killing of Lester Donaldson and Michael Wade Lawson. Clare Lewis, then Public Complaints Commissioner of Metropolitan Toronto Police, was appointed to head the task force. The task force was empowered "to address promptly the very serious concerns of visible minority communities respecting the interaction of the police community with their own." The task force recommended that officers whose performance indicates they have difficulty addressing race relations issues be required to attend training and that their performance be formally monitored. The task force also recommended that Toronto police establish an award for officers who exhibit skill in identifying race relations in the course of their duties.

1989

- Sophia Cook, a 23-year-old Black woman, was temporarily paralyzed after being shot in the back by a Toronto Police officer while sitting in a car. Cook had taken a ride in an allegedly stolen car after she had missed her bus. The officer was acquitted in 1994 of the charge of careless use of a firearm.

1990

- Marlon Neil, an unarmed 16-year-old, was shot and seriously injured by a Toronto Police officer. Neil was pulled over after fleeing a radar trap and was shot for holding what appeared to be a gun. He was holding the emergency brake. The officer was found not guilty

in 1991 of charges of criminal negligence causing bodily harm, attempted murder, and aggravated assault.

- The *Police Services Act* was amended to create the Special Investigations Unit (SIU). The SIU was responsible for carrying out "criminal investigations into circumstances involving police and civilians that have resulted in serious injury, death or allegations of sexual assault."

1991

- Jonathan Howell, 24, was shot and seriously injured by a Toronto Police officer. The shot left Howell with permanent brain damage. The officer was found guilty of the charge of careless use of a firearm, and was given an absolute discharge.

- Royan Bagnaut, 21, was shot and seriously injured by a Toronto Police officer. The officer was charged with criminal negligence causing bodily harm, but was acquitted in 1993.

1992

- The Ontario government established the Commission on Systemic Racism in the Ontario Criminal Justice System. The Commission's mandate was to study and make recommendations on all facets of Ontario's criminal justice system.

- The resulting Report of the Advisor on Race Relations to the Premier of Ontario, Bob Rae, concluded that visible minorities, particularly African Canadians, experienced discrimination in policing and the criminal justice system.

1993

- Ian Coley was killed by a Toronto Police officer.

1994

- Albert Moses, 41, was shot and killed in his room in downtown Toronto by Toronto Police officers. The SIU did not lay charges.

1995

- The Commission on Systemic Racism in the Ontario Criminal Justice System released its 450-page report. One of its recommendations was to develop guidelines for the exercise of police discretion to stop and question people, with the goal of eliminating differential treatment of Black and other racialized people. The Commission recommended that the guidelines be enforced by monitoring (through feedback from the community).

1996

- Tommy Anthony Barnett, 22, was shot and killed by a Toronto Police officer for allegedly unsheathing a sword. Barnett was shot four times in the chest. The SIU did not lay charges.

- Andrew Bramwell, 24, was shot and killed by a Toronto Police officer.

1999

- Henry Musaka, 26, was fatally shot. Musaka was shot twice in the head and once in the chest by Toronto Police officers with the emergency task force, who were responding to an allegation that Musaka had taken a St. Michael hospital doctor hostage. An unloaded pellet gun was later recovered from the deceased.

2002

- The *Toronto Star*'s "Singled Out" series was released. The series used crime data from 1996–2002, obtained through a Freedom of Information request, to identify differential treatment of Black persons by the TPS. The Star's investigation also uncovered the "Driving While Black" phenomenon where Black persons were disproportionately charged for "out-of-sight" driving offences.

- In response to the *Toronto Star*'s findings, then-Chief of Toronto Police Julian Fantino stated: "We do not do racial profiling. We do not deal with people on the basis of their ethnicity, their race or any other factor. We're not perfect people but you're barking up the wrong tree. There's no racism … it seems that, according to some people, no matter what honest efforts people make, there are always those who are intent on causing trouble."

- On the eve of International Human Rights Day, the OHRC announced that it would conduct an inquiry into the effects of racial profiling on individuals, families, communities and society as a whole.

2003

- The OHRC's inquiry into the effects of racial profiling was officially launched. The inquiry report, *Paying the Price – The human cost of racial profiling*, raised public awareness about the social cost of racial profiling and recommended action for police. The report recommended, among other things, that persons in positions of leadership in Ontario, including government officials, accept and acknowledge the existence of racial profiling and show a willingness to take action to combat it. Further, it recommended that where

anecdotal evidence of racial profiling exists, the organization involved should collect data to monitor its occurrence and to identify measures to combat it.

- The Association of Black Law Enforcers (ABLE) acknowledged the existence of racial profiling, stating: "A.B.L.E. acknowledges that the vast majority of Law Enforcement Officers in our Country perform their duties in a professional, honourable and ethical manner. We believe this because we are also these Officers. At the same time, we accept the presence of the Law Enforcement phenomenon known as Racial Profiling. As Black and Minority Officers, we live in two worlds that allow us to intimately understand the issues that affect our Community and our profession."

- Then-Toronto Police Chief Julian Fantino continued to deny the existence of racial profiling.

2005

- The OHRC released its *Policy and guidelines on racism and racial discrimination*. The OHRC defined racial profiling and highlighted factors that pointed to racial profiling.

2006

- Roger Shallow, a 37-year-old Black crown attorney, was arrested for causing a disturbance and resisting arrest by Toronto Police officers. Shallow filed a discrimination/racism-related complaint with the Human Rights Tribunal of Ontario, against the TPSB and five officers.

2007

- Human Rights Project Charter: The OHRC, TPS and TPSB agreed to embark on the Human Rights Project Charter. This agreement arose from a proposed settlement of several human rights complaints against the TPS. The three-year project was designed to help the TPSB and the TPS identify and eliminate discrimination in the hiring and employment of TPS members and in the services the TPS delivered to the public. The OHRC's role included providing advice to the TPS and TPSB on their ongoing human rights organizational change initiatives, working with sub-committees to develop human rights organizational change recommendations, and monitoring and reporting on progress.

- Then-Premier Dalton McGuinty appointed former Chief Justice and Attorney General Roy McMurtry and former Speaker of the Legislature Alvin Curling as Co-Chairs to conduct a Review of the Roots of Youth Violence.

2008

- The five-volume report of the *Review of the Roots of Youth Violence* was published. This report outlined the societal conditions that are root causes of violence involving youth. It also identified key barriers to thriving, including poverty, racism, inaccessible and

inadequate community design, failures of the education and justice systems, health issues, family issues, a lack of youth voice, and a lack of economic opportunity.

2009

- *Phipps v Toronto Police Services Board*, 2009 HRTO 877: The Human Rights Tribunal of Ontario found a Black letter carrier was racially profiled by Toronto Police while delivering mail.

- *Abbott v Toronto Police Services Board*, 2009 HRTO 1909: The Human Rights Tribunal of Ontario found that a Black woman experienced discrimination because of her race and gender during an encounter with a Toronto Police officer. The Tribunal found that a routine traffic stop would not have escalated to a physical confrontation with seven tickets being issued had the woman been White.

- *R v Ahmed*, [2009] OJ No. 5092 (SCJ): The Ontario Superior Court of Justice found the evidence of two Toronto Police officers unreliable and that the defendant, Mr. Ahmed, was investigated and arbitrarily detained because of his race.

- The OHRC released *Count me In! Collecting human rights-based data*, a guide to assist organizations in collecting and analyzing human rights data.

- Then-Toronto Police Chief William Blair acknowledged that racial bias exists within the TPS.

- The Office of the Independent Police Review Director (OIPRD) was established under the *Police Services Act*.

2010

- Alexander Manon, 18, died in custody of Toronto Police officers. A coroner's inquest found that the "cause of death was positional asphyxia after the chase and exertion." The SIU did not lay charges.

- Human Rights Project Charter: The OHRC, TPS and TPSB's Human Rights Project Charter agreement ended. The TPS and TPSB did not follow the OHRC's advice on accountability for racial profiling, which included the recommendation that there be race-based data collection on stops. Among other things, the OHRC also recommended providing human rights, equity and diversity training and ongoing professional development for all employees, to equip employees with the skills and knowledge to create a working environment that fully complies with norms established by the *Human Rights Code*, and that is anti-racist, non-discriminatory, professional, respectful, diverse, and inclusive.

- Reyal Jensen Jardine-Douglas, 25, died after being shot several times by a Toronto Police officer. Jardine-Douglas had mental health issues, and it was his family who had called the police for help to get him admitted to the hospital. The SIU did not lay criminal charges.

- Eric Osawe, 26, was killed in his Etobicoke apartment by a Toronto Police officer. Following the SIU investigation, the officer was charged with manslaughter, which was later upgraded to second-degree murder. In 2013, the charge was dismissed at the preliminary hearing.

- At its September Board meeting, the TPSB passed a motion that removed a prohibition, instituted in 1989, on collecting and analyzing police service data relating to race and other Code grounds.

2011

- The OHRC released *Human rights and policing: creating and sustaining organizational change*, built on the experience gained from the TPS, TPSB, and OHRC's Human Rights Project Charter initiative. The guide provides, among other things, a foundation for fostering and sustaining inclusive police services and preventing human rights violations before they happen. It recommends various steps related to police service delivery, such as collecting human rights-based data on service delivery, and including human rights considerations in performance management.

2012

- Then-Police Chief William Blair directed the Chief's Internal Organization Review (CIOR) to examine all aspects of the TPS related to community engagement, and specifically the Field Information Report (FIR) process. This review was the foundation for Phase II of the Police and Community Engagement Review (PACER). The PACER report focused on how the TPS could enhance public trust and safety, while delivering bias-free service.

- Michael Eligon, 29, was fatally shot by a Toronto Police officer. Eligon was being held at the Toronto East General Hospital for mental health concerns, and was killed while holding a pair of scissors. The SIU did not lay criminal charges.

- Frank Anthony Berry, 48, was fatally shot by Toronto Police officers. The officers discharged two bullets, hitting Berry in the torso, because they believed that he was approaching them with a knife. The object was later discovered to be a pair of scissors. The SIU did not lay criminal charges.

- The *Toronto Star*'s "Known to Police" series was released. The series used crime data, obtained through a Freedom of Information request, to show that Black people are grossly overrepresented in the TPS's carding data, among other things. The investigation also revealed that Black persons are more likely to be carded in affluent, mostly White areas of Toronto.

- *Maynard v Toronto Police Services Board*, 2012 HRTO 1220: The Human Rights Tribunal of Ontario found that race was a factor in suspect selection and the takedown at gunpoint of a Black man. The Tribunal found that the explanations the TPS officer offered did not fully address his conduct toward Mr. Maynard, and that the incident happened in part because Mr. Maynard was a young Black man. The OHRC was a party in this claim.

2013

- The OHRC made a deputation to TPSB, and sent letters to the TPSB Chair outlining recommendations on carding. The OHRC recommended that the Board stop the practice of carding until policies and procedures were fully developed and completely and transparently assessed against the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms.

- *Claybourn v Toronto Police Services Board*, 2013 HRTO 1298: Based in part on the OHRC's submissions, the HRTO found that filing a complaint about a police officer's conduct with the OIPRD does not prevent someone from also filing a human rights application alleging discrimination.

- The *Toronto Star* released another analysis of TPS data, as part of its "Known to Police" series. Between January 1, 2013 and November 13, 2013, Black people remained more likely to be carded in each of the city's patrol zones. In July 2013, there was a 75% drop in the number of contact cards filled out. This was at the same time that the TPS required officers to provide receipts to people who were carded. However, the proportion of contact cards filled out for Black persons went up to 27.4%, compared to 23.3% before the drop in 2013.

- Then-TPSB Chair Dr. Alok Mukherjee submitted a report (Mukherjee Report) to the Board on "police carding and the issue of profiling." The report included an overview of several decades' worth of reports and studies on racial profiling and tension over police stops in Toronto. The report also made 18 recommendations for the Board to direct to then-Chief William Blair.

- The TPSB invited public comment on the Police and Community Engagement Review (PACER) and Mukherjee reports. The OHRC made a deputation to the TPSB and restated its position that the TPS must stop carding until policies and procedures are fully developed and assessed against the *Code* and *Charter of Rights and Freedoms*. The OHRC was critical of the PACER report because, among other things: there was a lack of information about how contact card data were being used; there was no indication that individuals stopped would be told that they were free to leave; and it appeared that being in a high-crime neighborhood was enough to justify a street check.

- Sammy Yatim, 18, was fatally shot by a Toronto Police officer. Yatim was brandishing a three-inch knife while in an empty streetcar. The officer shot him eight times, six of which reportedly occurred once Yatim had already fallen to the ground. The SIU laid charges of second-degree murder and attempted murder and the officer was later convicted of attempted murder.

2014

- The OHRC delivered several deputations to the TPSB on carding. The TPSB passed a Policy on Community Contacts.

- The OHRC began a public education initiative on human rights systems, carding, and racial profiling through a series of events with community and advocacy groups.

- The OHRC made a submission to the Independent Review of the Use of Lethal Force by the TPS expressing concerns about disproportionate use of force against racialized people, and people with mental health disabilities.

- *R v A.K.,* 2014 ONCJ 374: The Ontario Court of Justice found that a Black youth who was arbitrarily detained, carded, dropped face first to the ground and searched, had his Charter rights breached, specifically sections 8, 9 and 10 of the Charter. The Court acquitted him of all charges.

- Human Rights Project Charter: Ryerson University's Diversity Institute conducted an independent evaluation of the Human Rights Project Charter. Forty-six Project Charter participants and key stakeholders were interviewed. Many interviewees noted the absence of a targeted strategy to combat racial profiling. The Diversity Institute recommended, among other things, that the TPS improve overall data collection and analysis systems, including taking steps to improve self-identification rates and collecting demographic information on respondents in both internal and external surveys.

- The TPSB retained Logical Outcomes to provide a report measuring the impact of the Board's "Community Contacts" policy. The report, entitled *A Community-Based Assessment of Police Contact Carding in 31 Division* (CAPP Report), found, among other things, that African Canadians were overrepresented in stops in 31 Division; African Canadians did not feel free to leave or assert their right to leave when stopped and questioned by TPS officers, and people in 31 Division overwhelmingly believed that TPS officers engage in racial profiling.

- The OHRC made a submission to the Ombudsman's investigation into the Ministry of Community Safety and Correctional Services' direction to police on de-escalating conflict situations, and noted the overrepresentation of racialized people in police use-of-force statistics.

- The OHRC delivered a deputation to the TPSB on the findings of the CAPP Report. The OHRC stated that the TPS and TPSB's work on racial profiling must: recognize that reform is long overdue; be transparent and provide the community with meaningful information; advance a rights-based approach to community policing that improves public trust and cooperation with the TPS; and show real accountability, up to and including dismissal, when officer behaviour is consistent with racial profiling.

- Daniel Clause, 33, was killed by a Toronto Police officer after being shot four times. The officer who stopped Clause at a community housing complex thought he matched the description of an armed robbery suspect. At the coroner's inquest, the officer testified that he shot Clause after he had reached and pointed a gun in the officer's direction. The gun was later discovered to be a pellet gun. The SIU did not lay charges.

2015

- Then-Police Chief Bill Blair suspended carding on January 1. The move came after the December 2014 TPSB meeting where the Board passed a motion asking the Chief to finalize carding procedures by February 2015, in line with the Board's community contacts policy – which emphasized citizens' rights, including the right to walk away from an encounter if the person was not being investigated for a specific crime. At the June 18, 2015 TPSB meeting, newly appointed Chief Mark Saunders confirmed that the suspension meant that contacts were not being entered from memo books into the police database. The TPSB passed a revised carding policy. The OHRC provided a deputation in advance of the Board's decision to pass the revised policy, citing various concerns.

- *R v Smith*, 2015 ONSC 3548: The Ontario Superior Court found that Mr. Smith was stopped by Toronto Police officers because he was a young Black male driving a Mercedes in an area known for gangs, drugs and guns. The Court found the stop was racially motivated, amounting to violations of Smith's ss. 8 and 9 *Charter* rights. The evidence against Smith was excluded, and he was acquitted of all charges.

- The OHRC sought intervener status in a case before the TPS Disciplinary Tribunal, often called the "Neptune 4 case." Two officers were charged with misconduct in the high-profile gunpoint arrest of four Black teens on Toronto Community Housing property. The OHRC sought to intervene to make sure the Disciplinary Tribunal considered racial profiling – an issue, the OHRC contended, that was a clear factor in the officers' alleged misconduct.

- Andrew Loku was shot and killed by a Toronto Police officer. Loku was shot in the hallway of his residential building, seconds after the officer saw him holding a hammer. The apartment complex Loku lived in was affiliated with the Canadian Mental Health Association.

- Kwasi Skene-Peters, 21, was killed by Toronto Police officers in Toronto's entertainment district. At the time of his death, Mr. Skene-Peters was wanted on a Canada-wide warrant in connection to a crime committed less than a month before his death. The SIU found the two Toronto officers acted in self-defence, and that Skene-Peters fired on the officers first. A coroner's inquest examined the events surrounding and leading up to his death.

- The OHRC began a year-long consultation to learn more about the nature of racial profiling across Ontario, and help organizations, individuals, and communities identify, address, and prevent racial profiling.

- The Ontario government announced it will standardize and regulate police street checks. The OHRC made submissions to the Ministry of Community Safety and Correctional Services on street checks.

2016

- In March, the Government of Ontario released a new regulation on street checks, O. Reg. 58/16: *Collection of Identifying Information in Certain Circumstances – Prohibition and Duties*.

- Alexander Wetlaufer, 21, was shot and killed by Toronto Police officers, who were responding to a report of a man armed with a gun. Wetlaufer was found in possession of a gun, and was shot three times by three officers after not responding to their request to put it down. After his death, police found that Wetlaufer's weapon was a BB gun. The SIU did not lay charges.

- In April, Black Lives Matter – Toronto organized a community protest outside TPS headquarters and Queen's Park, calling for an inquest into the death of Andrew Loku after the SIU did not find grounds to lay criminal charges against the subject officer.

- The OHRC's motion to intervene in the TPS disciplinary hearing in the "Neptune 4" case was denied on jurisdictional grounds.

- The provincial government announced its review of the *Police Services Act* as part of its Strategy for a Safer Ontario (SSO). The OHRC provided a series of recommendations to the government that were endorsed by over 20 community and advocacy groups.

- The United Nations Working Group of Experts on People of African Descent expressed serious concerns about systemic anti-Black racism in the criminal justice system in Canada.

- The OHRC made a submission to the Independent Review of Police Oversight Bodies commissioned by the Government of Ontario. The report submitted to the Ministry of the Attorney General by the Honourable Justice Michael H. Tulloch included a series of recommendations aimed at building public trust in law enforcement, and ultimately increasing public safety.

- *R v Ohenhen*, 2016 ONSC: The Superior Court of Ontario found no legal basis for Toronto Police officers' detention, arrest and search of a Black man. The Court found the officers had breached the man's ss. 8, 9 and 10(a) and (b) *Charter* rights, excluded the evidence against Mr. Ohenhen, and acquitted him of all charges.

- *R v Thompson*, [2016] OJ No. 2118: The Ontario Court of Justice found the stop of a Black man was racially motivated, and a result of racial profiling. The evidence from the illegal stop was excluded, and the charges against Mr. Thompson were dismissed.

- Dafonte Miller, 19, suffered serious injuries after an altercation in Durham Region with an off-duty Toronto Police officer and his brother. Despite the involvement of an off-duty officer, neither the TPS nor the Durham Police Service notified the SIU. Miller's lawyer later notified the SIU, which laid charges against the officer and his brother.

2017

- Andrew Henry, 43, was arrested after allegedly assaulting Toronto Police officers. While he was face-down on the pavement, he was Tasered twice and repeatedly stomped on by a Toronto Police sergeant. The OIPRD investigation found misconduct by several officers, including excessive use of force by the sergeant, neglect of duty for failing to activate in-car camera systems and microphones on arriving at the scene, and discreditable conduct for how officers spoke to a bystander filming the event. A Discipline Hearing will be held for the sergeant who used excessive force.

- The OHRC released *Under Suspicion: Research and consultation report on racial profiling in Ontario*. The report confirmed that racial profiling is a daily reality that damages communities and undermines trust in public institutions. For this report, the OHRC combined social science research with lived experiences gained through consultations with over 1,600 individuals and organizations.

- *Elmardy v Toronto Police Services Board,* 2017 ONSC 2074: In a civil proceeding, the Superior Court of Ontario found that a Toronto Police officer committed battery against Mr. Elmardy, and violated his ss. 8, 9 and 10 constitutional rights under the *Canadian Charter of Rights and Freedoms*. He was awarded $25,000 in punitive damages for the police conduct. Elmardy appealed the decision and argued that the trial judge should have made a finding that he was racially profiled and the damages were not enough to deter and punish police officers who engage in racial profiling. The Divisional Court agreed and awarded Elmardy damages of $80,000. To date, this is the largest damage award in history for a victim of racial profiling.

- The Ontario government introduced the *Safer Ontario Act,* 2017 – comprehensive public safety legislation that, if passed, would represent the largest policing transformation in a generation. The proposed legislation would modernize the police accountability system in the province, among other things.

- The OHRC launched a public interest inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service. Using its legislated inquiry powers under the Ontario *Human Rights Code*, the OHRC called for the TPS, the TPSB and the Special Investigations Unit (SIU) to provide a wide range of data to determine exactly how and where racial profiling operates in law enforcement.

2018

- The OHRC made a submission to the Independent Street Checks Review commissioned by the Ontario government. The submission outlined concerns with *O. Reg. 58/16: Collection of Identifying Information in Certain Circumstances* and how it may not live up to its goal of "ensuring that police-public interactions should be conducted without bias or discrimination."

- The OHRC made a deputation to the TPSB in response to its Anti-Racism Advisory Panel (ARAP) Quarterly Update. The OHRC requested that the TPSB pass two motions:

1. The TPS shall collect race-based data on all stops, searches, and use-of-force incidents by January 2020 and publicly release data on an ongoing basis.

2. The ARAP shall limit the scope of its study to providing advice to the TPSB on *how* to collect race-based data on all stops, searches, and use-of-force incidents in a manner consistent with the Ontario *Human Rights Code* and the expectations of Indigenous, Black and other racialized communities.

- The OHRC released its interim Inquiry report, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, which found that Black people were overrepresented in SIU cases involving use of force by the TPS. It also found that SIU Director's Reports revealed a lack of legal basis for police stopping or detaining Black persons in the first place; inappropriate or unjustified searches during encounters; and unnecessary charges or arrests. The OHRC also spoke directly with approximately 130 people in Black communities. It heard their first-hand experiences with the TPS and the resulting fear, trauma, humiliation, mistrust, and expectations of negative treatment by police. The report recommended, among other things, that the TPS and TPSB acknowledge that the racial disparities and community experiences raise serious concerns, and that the TPSB require the TPS to collect and publicly report on race-based data on all stops, searches, and use-of-force incidents.

2019

- *R v Le,* 2019 SCC 34: The Supreme Court of Canada found that Toronto Police violated Mr. Le's section 9 constitutional rights under the *Canadian Charter of Rights and Freedoms* when they entered a private backyard in Toronto's Alexandra Park neighbourhood, without reasonable suspicion or a warrant, and began questioning Mr. Le and his friends, who were all racialized. In examining the social context of the interaction, the court cited reports from the OHRC, *A Collective Impact*, *Paying the Price* and *Under Suspicion*, and referred to them as originating from "highly credible and authoritative sources." The court also acknowledged that "we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities."

- At its meeting on September 19, 2019, the TPSB approved its *Policy on Race-Based Data Collection, Analysis and Public Reporting*, requiring the TPS to collect, analyze, and publicly report on race-based data on all stops, searches, interactions involving use of force, charges, apprehensions, and arrests. The policy includes a phased approach, beginning with collecting race-based data related to Use of Force Reports and Level 3 searches, beginning January 1, 2020. The OHRC provided both a verbal and a written deputation.

- The OHRC released its *Policy on eliminating racial profiling in law enforcement*. This policy defines racial profiling and describes both individual and systemic practices. It also provides key principles and practices for positive change and respect for human rights in law enforcement, including acknowledging the reality of racial profiling, engagement with racialized communities, policy guidance, race-based data collection, monitoring and accountability, and organizational change.

2020

- Regis Korchinski-Paquet, 29, died after a fall from a 24th floor balcony while Toronto Police officers were in attendance. Questions were raised surrounding police involvement in the circumstances of her death. The SIU investigated and did not lay any charges relating to her death.

- In June and July, at several large-scale community protests in Toronto, people spoke out against the killing of Black and Indigenous people by police officers and called for de-funding the TPS.

- Toronto Police Officer Michael Theriault was convicted of assault, but acquitted of aggravated assault and obstruction of justice, in the beating of Dafonte Miller. Theriault's brother was acquitted of all charges.

- The OHRC released its interim inquiry report, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, which found that Black people were more likely to be arrested, charged, overcharged, struck, shot or killed by Toronto Police.

- The OHRC provided a *written deputation to the Toronto Police Services Board re: Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety*, encouraging the TPSB to consult with Black communities and organizations as well as the OHRC, and work to establish legally binding remedies to address systemic racism.

- The OHRC provided an oral deputation at the TPSB meeting on August 18, 2020, raising concerns about the TPSB's process for developing its 81 recommendations on police reform, noting the process did not sufficiently include consultation with Black communities or the OHRC. The deputation also raised concerns with the content of the TPSB's recommendations, noting areas that were not addressed.

- The TPSB passed its report on *Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety,* containing 81 recommendations aimed at police reform. These include equipping front-line officers with body worn-cameras.

- Toronto City Council passed *Changes to Policing in Toronto,* containing 36 recommendations on police reform

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2021

- The Canadian Civil Liberties Association (CCLA) released *Rethinking Community Safety – A Step Forward For Toronto,* a report outlining disparities faced by Black and Indigenous communities in police encounters. It recommends the re-allocation of funds from the criminal justice system to social service alternatives to police response, including services for people experiencing homelessness, a civilian-led mental health crisis response, outreach workers for youth, and victim-oriented services for gender-based violence.

- The TPS Disciplinary Tribunal found both officers in the "Neptune 4" case, Constable Lourenco and Constable Pais, guilty of discreditable conduct in the unlawful arrest of the youths. Constable Lourenco was also found guilty of a second charge of discreditable conduct for excessive force in punching one of the youths. He was found not guilty of discreditable conduct for drawing his firearm (Note: this finding was overturned on appeal). The TPS Disciplinary Tribunal awarded a penalty of forfeiture of 12 days pay for Constable Lourenco and 3 days pay for Constable Pais.

- The Independent Civilian Review into Missing Person Investigations released its final report, *Missing and Missed*. The report contained 151 recommendations aimed at improving the relationship between the TPS and LGBTQ2S+ communities, and other marginalized, and vulnerable communities.

- The Ontario Court of Appeal upheld the conviction and sentence of Toronto Police officer Michael Theriault in the beating of Dafonte Miller.

2022

- The Toronto Community Crisis Service (CCS) was launched. It provides a non-police response to people experiencing mental health crises through multidisciplinary teams of trained crisis workers.

- The TPS released an Independent Expert Assessment Report: Toronto Police Service Race-Based Data Collection Strategy Phase I pursuant to its Race-Based Data Collection Strategy. The analysis of the data showed that Black people were overrepresented in enforcement actions, use-of-force incidents, and strip searches. The report contained 38 actions to address the outcomes. At the press release, then-Chief Ramer acknowledged that there is systemic discrimination within the TPS and issued an apology to Black communities.

- The OHRC delivered an oral deputation on the Race-Based Data Collection Strategy Report at the TPSB meeting on June 22, 2022. The OHRC acknowledged the impact of anti-Black racism on Black communities and the importance of concrete, measurable, transparent change and reducing discriminatory policing in a timely manner.

- Toronto Police Officer Christopher Homink pled guilty to discreditable conduct before the TPS Disciplinary Tribunal. He admitted to making "inappropriate" remarks at the scene of a fatal shooting, speculating that a "Somalian guy did it" or "at least…Black guy." The "inappropriate comments" were discovered by an officer reviewing body worn camera footage.

- The Ontario Civilian Police Commission (OCPC) overturned a finding from the TPS Discipline Tribunal in the "Neptune 4" case, concluding that Constable Laurenco had used excessive force in pointing his firearm at the complainants and is guilty of misconduct on this charge.

Appendix 7 - Terms of Reference

Ontario Human Rights Commission Inquiry into Racial Discrimination and Racial Profiling of Black persons by the Toronto Police Service

The Ontario Human Rights Commission (OHRC) is the provincial statutory agency responsible for advancing human rights and preventing systemic discrimination in Ontario. The OHRC has broad powers under the Ontario *Human Rights Code* (*Code*) to initiate inquiries in the public interest, monitor and report on human rights issues, and engage in litigation, including by filing applications with the Human Rights Tribunal of Ontario and intervening in other legal proceedings.

The OHRC's **2017-2022 Strategic Plan** identifies enforcing human rights in the criminal justice system as one of four strategic priorities. The OHRC is working towards ending racial profiling and discrimination in all police practices, increasing human rights accountability in policing and making human rights competence a requirement for the police.

For over a decade, the OHRC has raised concerns about anti-Black racism in policing in Toronto. Carding and other practices that have a disproportionate negative impact on Black persons have eroded trust in police, which is essential to effective policing, and ultimately, public safety.

The OHRC is conducting a public interest inquiry into potential racial profiling of and racial discrimination against Black persons by the Toronto Police Service (TPS). This inquiry is being carried out under the OHRC's powers pursuant to section 31 of

the *Code* which include but are not limited to:

- The power to request the production of documents or things;
- The power to question a person on matters that may be relevant to the inquiry; subject only to the person's right to counsel; and
- The ability to use expert assistance to carry out the inquiry.

Scope of the Inquiry

1. The OHRC will inquire into the following practices and activities of the

TPS between January 1, 2010 and June 30, 2017 to assess whether they are consistent with racial profiling and racial discrimination against Black persons:

    a. Stop and question practices of the TPS.
    b. Use of force by the TPS.
    c. Arrests and charges by the TPS and forms and conditions of release applied by the TPS in relation to certain categories of offences:
        i. Out-of-sight driving offences;
        ii. Simple drug possession;
        iii. Obstructing a police officer, assaulting a police officer, assaulting a police officer to resist arrest, and uttering threats against a police officer;
        iv. Loitering, causing a disturbance and trespassing; and
        v. Failing to comply with a bail condition or undertaking to a police officer.

2. The OHRC will inquire into the possible disproportionate impact of the above activities on Black persons and communities.

3. The inquiry will examine the TPS's and Toronto Police Services Board's (TPSB) culture, training, policies, procedures and accountability mechanisms relating to racial profiling and racial discrimination.

4. The OHRC will also examine whether the TPS and TPSB have developed systems to review whether stop and question, use of force, arrests and charges, and release practices disproportionately impact racialized people.

5. The OHRC will inquire into how the TPS and TPSB respond to findings by the Human Rights Tribunal of Ontario, civil courts, and criminal courts that its officers have engaged in racial discrimination or racial profiling.

6. The OHRC may examine and report on any other circumstance relevant to potential racial profiling of and racial discrimination against Black persons by the TPS that may arise during the course of the inquiry.

Inquiry Process

7. To carry out the inquiry, the OHRC will:
    a. seek documents and data including from the TPS, TPSB and the Special Investigations Unit (SIU);
    b. Conduct research, including interjurisdictional research;
    c. Retain experts;
    d. Consult with key stakeholders; and
    e. Receive information from affected individuals, interested groups and organizations.

8. The OHRC will report publicly on the inquiry process, its findings and recommendations. The OHRC will provide an opportunity for the TPS and TPSB to respond to the inquiry's findings and recommendations before making the report public.

9. The OHRC will also assess the need to take further steps available to it under the *Code* to address any issues identified.

10. Any revisions to these Terms of Reference will be posted publicly.

Privacy

11. The OHRC recognizes the potential vulnerability of affected individuals and the sensitivity of the information it will receive during the course of the inquiry.

12. The OHRC will take all reasonable steps to conduct any interviews in a manner that protects the security of the person interviewed and respects their confidentiality. The OHRC will not disclose personal information of affected individuals without informed consent.

13. The OHRC will take all reasonable steps to ensure that personal information that is gathered from individuals, the TPS, the TPSB or the SIU is treated confidentially and in accordance with the *Freedom of Information and Protection of Privacy Act* (*FIPPA*).

14. The OHRC will be governed by its **Protection of Personal Information and Privacy Safeguards Policy** and will take all reasonable steps to prevent unauthorized access, use or disclosure of personal information as directed by *FIPPA*.

15. The OHRC will destroy any personal information as soon as reasonably possible after it is no longer required.

Appendix 8 - Status of requests to the TPS, TPSB and SIU

SIU

OHRC request	OHRC request date	SIU response	SIU response date
The full investigative files of TPS officers that were initiated, completed, and closed between January 1, 2010 and June 30, 2017, and ongoing SIU investigations of TPS officers that were started on or before December 31, 2016.	June 30, 2017	The OHRC received information electronically from investigative files (with the exception of cases before the courts and active investigations) for cases initiated, completed, and closed between 2013 and 2017.	The OHRC received the information on an ongoing basis between September 2017 and July 2018.
Interview with Director of the SIU, Joseph Martino		Director Martino agreed to be interviewed by the OHRC. The interview was recorded to ensure accuracy.	The interview was held on May 26, 2022.

TPSB

OHRC request	OHRC request date	TPSB response	TPSB response date
1. Policies, procedures, orders, training materials, and other documents and things from January 1, 2010 to June 30, 2017, including any updates made	June 30, 2017	The TPSB provided relevant policies, reports, minutes, and other documents in its possession.	The OHRC received the information on an ongoing basis between

OHRC request	OHRC request date	TPSB response	TPSB response date
during this period, that provide guidance on: - officer use of force - body-worn cameras - in-car camera systems - recordings taken by bystanders or witnesses - the particular offences listed by the OHRC - forms of release - racial profiling, racial discrimination, and racial harassment - carding/street checks - bias - cultural competency - Toronto Anti-Violence Strategy (TAVIS). 2. Documents and things from January 1, 2010 to June 30, 2017 that may evaluate TPS and/or TPSB anti-racism initiatives in service delivery.			September 5, 2017 and November 16, 2020.
3. Responses from the TPSB to written questions in the areas of: - onboarding and training - policies, procedures, and committees - identifying, monitoring, and addressing anti-Black racism, racial profiling and racial discrimination of Black people in service delivery - selecting the Chief of Police - Board and officer diversity - anti-racism initiatives - stop and question practices - regulated interactions - officer accountability for findings of racial profiling and racial discrimination by the Human Rights Tribunal of Ontario (HRTO) and courts - officer accountability for misconduct flagged by the SIU Director - race-based data collection policy - Anti-Racism Advisory Panel (ARAP) and the implementation of	January 22, 2020	The TPSB provided written responses to the OHRC's questions.	The OHRC received written responses on May 28, 2020, July 27, 2020, and November 16, 2020.

OHRC request	OHRC request date	TPSB response	TPSB response date
the Loku inquest recommendations • quotas/targets • pre-charge diversion.			
3. Interview with former member of the TPSB, Uppala Chandrasekera.	October 1, 2020	The TPSB facilitated the interview.	The interview was held on October 28, 2020.
4. Interviews with former Co-Chair of the TPSB's ARAP, Dr. Notisha Massaquoi.		The TPSB facilitated the interviews. The interviews were recorded to ensure their accuracy.	The interviews were held on April 22 and May 16, 2022.
5. Interview with the Community Co-Chairs of the TPSB's Mental Health and Addictions Advisory Panel, Steve Lurie and Jennifer Chambers.		The TPSB facilitated the interviews. The interviews were recorded to ensure their accuracy.	The interviews were held on May 6 and June 9, 2022.
6. Interviews with TPSB then Chair, Jim Hart and Ryan Teschner (then Executive Director and Chief of Staff, TPSB).		Then Chair Hart and Mr. Teschner agreed to be interviewed and they were jointly interviewed. The interviews were recorded to ensure their accuracy.	The interviews were held on October 14, 2022 and December 9, 2022.

TPS

OHRC request or modified request	OHRC request date	TPS response	TPS response date
1. Manuals, definitions, variable and value labels, guides, instructions, and other background documents that are relevant to the Criminal Information Processing System, Field Information Report, and Versadex databases, or provide guidance on database input and output of carding/street checks, use of force, the data on charges and arrests sought.	June 30, 2017	The TPS provided relevant documents in its possession. The TPS provided written descriptions of the variables and value codes on the data produced to date.	December 18, 2017 and February 27, 2018 September 4, 2018
2. Carding/street checks submitted by TPS officers between January 1, 2010 and June 30, 2017.	June 30, 2017	The OHRC received adult carding data between January 1, 2010 and November 6, 2013.	February 1, 2018

OHRC request or modified request	OHRC request date	TPS response	TPS response date
		The OHRC received adult carding data between November 6, 2013 and June 30, 2018.	September 4, 2018
3. Use of Force Reports and data from related General Occurrence Reports between January 1, 2010 and June 30, 2017.	June 30, 2017		
4. Modified request: Use of Force Reports from July 1, 2016 to June 30, 2017, linked to General Occurrence Reports.	November 8, 2017	The OHRC received Use of Force Reports from July 1, 2016 to June 30, 2017.	December 18, 2017
5. Additional request: Illness/Injury Reports.	March 8, 2018	The OHRC received January 1, 2015 to June 30, 2017 Illness/Injury Reports.	April 11, 2018
6. General Occurrence Reports corresponding to the Injury Reports from January 1, 2015 to June 30, 2017.	July 25, 2018	The OHRC received the General Occurrence Reports corresponding to the Injury Reports from January 1, 2015 to June 30, 2017.	September 4, 2018
7. Documents and things that describe whether, how, and when the information in (3) and (4) is currently stored and accessed and was stored and accessed between January 1, 2010 and June 30, 2017.	June 30, 2017	The TPS provided documents that included its use-of-force procedures, reports to the TPSB on access to historical carding data from the first two quarters of 2017, and the Chief's 2012 Internal Organizational Review related to carding. The TPS advised the OHRC how carding data was viewable.	December 18, 2017, February 9, 2018, October 2, 2018
8. Data from charges laid and any accompanying charges and arrests made, including form of release/release type between January 1, 2010 and June 30, 2017 for the following charges/offence categories: • out-of-sight driving offences, e.g., driving without a license or insurance • simple drug possession • obstructing a police officer, assaulting a police officer, assaulting a police officer to resist arrest, and uttering threats against a police officer	June 30, 2017	The OHRC received adult charge, arrest and release data.	February 1, 2018

OHRC request or modified request	OHRC request date	TPS response	TPS response date
• loitering, causing a disturbance and trespassing • failing to comply with a bail condition or condition of release required by a police officer.			
9. Policies, procedures, orders, training materials, and other documents and things from January 1, 2010 to June 30, 2017, including any updates made during this period, that provide guidance on: officer use of force body-worn cameras in-car camera systems recordings taken by bystanders or witnesses the particular offences listed by the OHRC forms of release racial profiling, racial discrimination and racial harassment carding/street checks bias cultural competency TAVIS.	June 30, 2017	The TPS provided relevant documents in its possession.	February 27, 2018, March 6, 2018, April 27, 2018, March 9, 2020, April 28, 2020, June 13, 2020, June 19, 2020, September 4, 2020, March 16, 2021, March 31, 2021, June 15, 2021
10. Additional forms and procedures for performance and accountability in place between January 1, 2010 and June 30, 2017.	July 25, 2018	The OHRC received these documents.	September 2, 2018
11. Letters, memorandums of understanding or other agreement authorizing the TPS to act as agents for the Toronto Community Housing Corporation to enforce the *Trespass to Property Act.*	June 30, 2017	The TPS did not provide these documents as a result of its resources.	December 18, 2017
12. Modified request: Agreements for two complexes as a starting point.	July 25, 2018	The TPS provided relevant documents regarding the following divisions: 11–14, 22, 23, 31–33, 41–43, 53–55.	September 2, 2018

OHRC request or modified request	OHRC request date	TPS response	TPS response date
13. Documents and things, including research undertaken or commissioned by the TPS from January 1, 2010 to June 30, 2017, that may show that the TPS has analyzed or developed systems to review whether the following TPS practices disproportionately affect racialized people: • use of force • stop and question • charging • arrest • release.	June 30, 2017	The TPS provided, among other things, reports on community focus groups held for the TPS, signed research agreements with external parties and materials related to the Project Charter.	December 18, 2017; February 9 and 27, 2018
14. Documents and things from January 1, 2010 to June 30, 2017 that may show how the TPS addresses racial profiling or racial discrimination involving TPS officers, including findings in decisions of the HRTO, civil courts and criminal courts, from a disciplinary perspective. 15. Documents and things that show whether and how the TPS responded to or addressed the findings in specific cases.	June 30, 2017	The TPS refused to provide any disciplinary information that arises under Part V of the *Police Services Act*. The TPS did provide Business Plans, Service Performance Reports, Project Charter documents, and the DiversiPro report on intercultural competence.	December 17, 2017 February 9, 2018
16. Modified request: Aggregated data by year between 2010 and 2017 on the number of officers who were found by the TPS to have engaged in racial profiling, racial discrimination, or racial harassment as a result of findings of racial profiling or racial discrimination in decisions of the HRTO, civil courts, and criminal court.s A summary of the range of disciplinary actions taken by the TPS in relation to the officers above without revealing information about the officer.s	July 25, 2018	The TPS provided responsive information.	October 2, 2018

OHRC request or modified request	OHRC request date	TPS response	TPS response date
17. Decisions of the TPS Disciplinary Tribunal and Notices of Hearing related to the conduct of the officers where there have been findings in specific cases.	July 25, 2018 April 8, 2019	The TPS asked for a list of officer names. The OHRC provided this list on September 6, 2018. The TPS provided responsive information.	August 31, 2018 May 10, 2019
18. Documents and things from January 1, 2010 to June 30, 2017 that may evaluate TPS and/or TPSB anti-racism initiatives in service delivery.	June 30, 2017	The TPS sent its strategy management environmental scans between 2010 and 2013.	December 17, 2017
19. Annual violent crime rate and total crime rate in each of Toronto's patrol zones between 2010 and 2017.	June 30, 2017	The TPS provided crime rates and crime counts by patrol zone for crimes against persons and property. The TPS provided instructions on how to use its TPS Crime App.	November 17, 2017 March 6, 2018
20. Interviews with TPS senior command about policies and procedures, anti-racism initiatives, accountability mechanisms, and responses to reports. Follow-up questions from interviews were also posed and answered in writing.	December 23, 2019	The TPS scheduled OHRC interviews with members of TPS senior command, which were conducted between February 2020 and July 2020. Interviewees signed acknowledgements confirming that the OHRC's interview notes reflected the content of the interviews. Outstanding acknowledgments include those from: • Mark Saunders, former Chief of the TPS • Myron Demkiw, then-Staff Superintendent of Corporate Risk Management.	February 2020 to August 2021
21. Additional interviews with TPS senior command about policies and procedures, anti-racism initiatives, accountability mechanisms, and recommendations. Follow-up questions from interviews were also posed and answered in writing.	March 2022 to November 2022	The TPS scheduled additional OHRC interviews with members of TPS senior command, which were conducted between June and November 2022. These interviews were recorded to ensure their accuracy.	March 2022 to November 2022
22. Interviews with members of the Black Internal Support Network (BISN).	March 2022 to May 2022	A Chief's direction (649 memorandum) was issued, which allowed the OHRC to reach out to BISN members directly and that no	Interviews were held between July and September 2022

OHRC request or modified request	OHRC request date	TPS response	TPS response date
		disciplinary action would be taken based on the interviews.	
23. Email communication to all officers requesting their feedback on the OHRC's Inquiry.	December 23, 2019, December 17, 2020 and March 3, 2021	The OHRC reached out to the TPS about holding focus groups with TPS officers. However, due to concerns raised by the Toronto Police Association about their officers taking part in focus groups, as well as logistical challenges arising from the COVID-19 pandemic, the OHRC did not proceed with these focus groups. The OHRC provided the TPS with an email that was sent to all officers in March 2021, inviting them to share their thoughts on the Inquiry and related areas. Five officers agreed to be interviewed or provided detailed feedback.	March 2021
24. Officer survey		An OHRC survey was conducted of TPS uniform officers below the rank of inspector. The survey was open between October 12 and October 26, 2022.	
25. Diversity in employment data and analysis.	November 18, 2019, January 31, 2020	The OHRC requested data on, and related analysis of, the diversity of its officers by race and gender at all ranks between January 1, 2010 and June 30, 2017. The OHRC also requested that the TPS produce its most recent data on and related analysis of the same. The TPS provided responsive information.	February 4, 2020
26. Decisions of the TPS Disciplinary Tribunal and Notices of Hearing related to the conduct of the officers where there were concerns about officer misconduct from the SIU Director in specific cases.	June 6, 2019; July 28, 2021	The TPS provided responsive information.	October 17, 2019; August 9, 2021
27. Evaluation of the Police and Community Engagement Review (PACER).	October 3, 2019 January 20, 2021 February 9. 2021	The OHRC requested that the TPS produce the incomplete draft report on the evaluation of PACER. The TPS refused to produce the report on the grounds that it is	November 22, 2019 February 2, 2021

OHRC request or modified request	OHRC request date	TPS response	TPS response date
		irrelevant because "it is an unfinished report that, in present draft form, contains inaccuracies and is far from complete."	
28. TPS analysis of the data requested by the OHRC.	October 3, 2019	The OHRC requested any TPS analysis of the data requested by the OHRC, including SIU data, lower-level use-of-force data, charge, arrest and release data, and street check data. The TPS refused to produce this information. It asserted it would be covered by litigation privilege and is irrelevant since the work would have been done after the announcement of the OHRC's Inquiry and its launch.	November 22, 2019
29. 2020 in-service training program.	March 10, 2020	The TPS provided responsive information.	June 13, 2020 September 3, 2020 March 31, 2021
30. Additional benchmarking data re: race and crime.	April 30, 2021 May 27, 2021 July 5, 2021	The TPS provided responsive data.	May 27, 2021 June 21, 2021 September 8, 2021
31. Documents regarding new TPS training initiatives that were described during the TPSB's meeting of October 11, 2022.	October 21, 2022	The TPS provided responsive training. Some of the training initiatives described during the TPSB's meeting of October 11, 2022 were in the development stage and the materials were not available for production.	November 16, 2022
32. A copy of the slide presentation as well as a list of the names of those who presented to the OHRC during the OHRC's visit to the Toronto Police College on March 23, 2023.	April 17, 2023	The TPS provided the slide presentation and list of presenters.	April 21, 2023 and April 26, 2023

Appendix 9 - Final Privacy Safegaurds

Protection of personal information and privacy safeguards policy: the Toronto police service racial profiling and racial discrimination inquiry

Introduction

November 27, 2017

1. The Ontario Human Rights Commission (OHRC) recognizes the importance of protection of personal information.
2. To protect human dignity and maintain public trust and confidence in the OHRC as an institution, the OHRC works hard to comply with all relevant laws that relate to the handling of personal information.
3. As a provincial public institution, the OHRC must abide by the *Freedom of Information and Protection of Privacy Act* (*FIPPA*).[1]
4. The head of the OHRC, the Chief Commissioner, has a duty to take objectively reasonable steps and measures to:

   - Ensure the preservation of records in the OHRC's custody and control;
   - Ensure the security of original records; and
   - Protect records from inadvertent destruction or damage, "taking into account the nature of the records to be protected".[2]

5. OHRC staff have a duty to exercise due diligence in ensuring that personal information is protected.

The Toronto Police Service racial profiling and racial discrimination inquiry

6. Using its inquiry powers under s. 31 of the *Ontario Human Rights Code* (the "*Code*"), the OHRC has commenced an inquiry (the "TPS Inquiry") in to the potential racial profiling of, and racial discrimination against, Black persons.
7. In connection with the TPS Inquiry, the OHRC has requested documents and information from the Toronto Police Service (TPS), the Toronto Police Service Board (TPSB) and the Special Investigations Unit (SIU). The information requested may include "personal information" within the definition of *FIPPA*.

Privacy Safeguards

8. The more sensitive the personal information collected, the more stringent the security measures adopted must be in order to mitigate the risk of a privacy breach.[3]
9. The purpose of this policy is:
   a. To identify and explain the privacy safeguards that the OHRC has and/or will have in place in relation to the TPS Inquiry;
   b. To clarify the roles and responsibilities of OHRC staff involved in the TPS Inquiry; and
   c. To demonstrate that the potential privacy implications of the TPS Inquiry have been considered.

I. Administrative Safeguards

a. Data Minimization

10. The first step to protecting the privacy of personal information is to minimize to the extent possible, the personal information that comes into the custody of the OHRC.

11. In securing compliance with the OHRC's document requests, the OHRC will collaborate with the TPS, TPSB and SIU to ensure that personal, identifying information collected by the OHRC is minimized.

12. If the OHRC is provided with access to personal information, it will at the earliest possible stage, adopt measures to minimize the collection of personal, identifying information. This can be achieved by the use of templates that do not include an individual's name or other personal information that would identify them, and by anonymizing the data obtained.

13. The OHRC does not intend to disclose personal information obtained from the TPS, TPSB or SIU through the TPS Inquiry. The OHRC's report relating to the TPS Inquiry will not contain personal information that identifies any particular individual.

14. The OHRC will destroy any personal information as soon as reasonably possible after it is no longer required.

B. Consent

15. Before the OHRC has access to personal information from the TPS, TPSB and SIU, the OHRC will provide notice of collection of personal information on its website. Individuals who believe that their personal information may be affected will be able to contact the OHRC. They may also contact the Information and Privacy Commissioner.

16. The OHRC may also obtain personal information through interviews with voluntary participants. Before conducting an interview, the individual's consent will be obtained. To the extent possible, information contained in the inquiry report will be aggregated and/or anonymized. However, if it is possible that a particular individual could be identified, the individual's informed consent will be obtained before any personal information is disclosed.

C. Authorized Personnel

17. Access to any personal information obtained through the TPS Inquiry is strictly limited to OHRC staff who are on the Inquiry Team.

18. The Privacy Lead will keep a list of individuals on the Inquiry Team. No OHRC staff other than the Inquiry Team will have access to personal information. Inquiry Team members may be added or changed as needed.

D. Responsibilities of the TPS Inquiry Team

19. The Inquiry Team must comply with all privacy safeguards set out in this Policy.

20. The Inquiry Team must exercise reasonable judgment when handling personal information, depending on the sensitivity of the data, nature of the information and use.

21. The Inquiry Team, as part of exercising privacy due diligence, should identify and address potential privacy concerns in the course of performing their roles in relation to the TPS Inquiry.

22. The Inquiry Team must report a privacy breach or potential privacy breach to the Privacy Lead and Manager as soon as they become aware that a breach or potential breach has occurred.

E. Responsibilities of Non-TPS Inquiry OHRC Staff

23. OHRC staff not on the Inquiry Team must, to the extent possible, avoid encountering TPS Inquiry-related personal information, and must keep any personal information that they may learn in relation to the TPS Inquiry confidential.

24. OHRC staff will consult with the Privacy Lead and the Inquiry Team if they have questions or concerns related to privacy matters.

25. OHRC staff must report a privacy breach or potential privacy breach to the Privacy Lead and Manager as soon as they become aware that a breach or potential breach has occurred.

F. Responsibilities of the TPS Inquiry Lead for Privacy Matters

26. At this time, the TPS Inquiry Lead for Privacy Matters ("Privacy Lead") is:

Sunil Gurmukh, Counsel, Legal Services and Inquiries

Ontario Human Rights Commission 180 Dundas Street West, 9th Floor Toronto, Ontario M7A 2R9 Telephone: (416) 314-4519

Email: sunil.gurmukh@ohrc.on.ca

27. The Privacy Lead will act as the main person of contact for public citizens and internal or external staff who have a TPS Inquiry privacy question or concern.
28. The Privacy Lead will brief the Inquiry Team on the privacy-related requirements of *FIPPA* and the contents of this Policy.
29. The Privacy Lead will frequently monitor and report on compliance with this Policy to ensure that safeguards have been implemented and that privacy due diligence continues to be applied throughout the TPS Inquiry's lifecycle.

G. Acknowledgement

30. Before having access to any personal information obtained through the TPS Inquiry, all Inquiry Team members, whether internal or external to the OHRC, must voluntarily sign the acknowledgement (Appendix 'A' hereto), which requires that they:

- Read this Policy and understand the privacy safeguards herein;
- Keep any personal information in a secure location at all times;
- Ensure that no personal information is used or disclosed unless necessary and proper in the discharge of the OHRC's functions; and
- Ensure that no personal information is used or disclosed in a form in which the individual to whom it relates can be identified, without prior informed consent of the individual to whom the information relates.

H. The Retained Expert

31. An expert (the "Retained Expert") and graduate student ("Student") have been engaged to assist with the analysis of the TPS Inquiry data. A confidentiality agreement has been executed with both the Retained Expert and Student.
32. To the extent that the Retained Expert and Student have access to personal information, they must under no circumstances disclose any personal information to anyone other than the Inquiry Team.
33. The Retained Expert and Student shall not disclose or otherwise provide access to non-personal information and data obtained through the TPS Inquiry, other than for the defined research purposes.
34. The Retained Expert and Student will implement safeguards and protocols consistent with this Policy and will consult with the Inquiry Team on any additional safeguards that may be required.

II. Physical Safeguards

A. Access Card

35. An access card is required to enter the OHRC office.
36. Staff must not permit unauthorized or uninvited people to enter into the OHRC office space.
37. Staff will notify security of suspicious activity in the OHRC vicinity.

B. Office

38. As much as possible, Inquiry Team will turn their computer monitors off, sleep their computers or change screens to prevent others from seeing personal information on the screen.
39. Hard copy documents or files containing personal information must be kept in a central office/room that can be locked when unattended. When possible, Inquiry Team should use a clean desk policy whereby personal information is kept out of sight, ideally, locked in a drawer or filing cabinet.
40. When discussing TPS Inquiry matters, Inquiry Team staff will close the door during their meetings to ensure that others do not overhear personal information.
41. The Inquiry Team will take all reasonable steps to ensure that third parties who may attend the OHRC office (invited guests, maintenance staff or cleaning staff) do not have access to personal information.

C. Hard Copy

42. Hard copies of collected TPS Inquiry materials, including any personal information, must be stored in a secure location, ideally raised off the floor to prevent flood damage and in a fire-resistant space.
43. When not in use, hard copies of collected TPS Inquiry materials, including any personal information, must be locked in filing cabinets.

D. Printing

44. The Inquiry Team should refrain from printing and photocopying any personal information.
45. The Inquiry Team must not leave a document containing personal information on the printer. If printing, staff should use Secure Print so that personal information does not print until the staff member goes to the printer to retrieve it.

III. Electronic Safeguards

A. OHRC Computers

46. OHRC computers are password protected. The passwords automatically expire every 45 days.
47. The Windows firewall is enabled on all OHRC computers. The computers use McAfee software to protect them from virus and malware threats.
48. When working on TPS Inquiry materials, staff must not use a personal or non- OHRC computer.

B. OHRC Laptops

49. OHRC laptops are password protected. The passwords automatically expire every 45 days.
50. The Windows firewall is enabled on all OHRC laptops. The laptops use McAfee software to protect them from virus and malware threats.
51. The hard drive of every OHRC laptop is encrypted. In the event that a laptop is misplaced or lost, a finder should be unable to access the secure information.
52. The Retained Expert and Student will be provided with an OHRC laptop as an electronic safeguard.

C. Email

53. The Inquiry Team will not use their personal emails for any TPS Inquiry work.
54. No personal information shall be communicated or transmitted by email.

D. Fax

55. No personal information shall be faxed anywhere.

E. Off-Site

56. If Inquiry Team members must work off-site, then they will use a Virtual Private Network (VPN) service.
57. The Inquiry Team shall not remove any personal information from the TPS Inquiry data from the OHRC premises.

F. Storage

58. Electronic information obtained during the TPS Inquiry will be stored in a shared folder, accessible only by members of the Inquiry Team.

G. Text

59. The Inquiry Team will not use instant messaging tools to discuss TPS Inquiry material.

Conclusion

Protection of personal information is an ongoing responsibility. This policy was adopted at an early stage of the TPS Inquiry and will be re-assessed on an ongoing basis.

[1] R.S.O. 1990, c. F-31, s 2(1) [*FIPPA*]; *Freedom of Information and Protection of Privacy Act*, R.R.O. 1990, Reg. 460: GENERAL, s. 1(1), Schedule, Item 110 [*FIPPA* Reg General]

[2] *FIPPA*, *supra* note 1, s. 10.1; *FIPPA* Reg General, *supra* note 1, ss. 3(1), 4(3), Schedule.

[3] See e.g. Information and Privacy Commissioner of Ontario, *Open Government and Protecting Privacy*(Toronto: IPC, 15 March 2017) at 8.

Appendix 10 - Inquiry Letters

June 30, 2017

Tony Loparco Director
Special Investigations Unit
5090 Commerce Boulevard Mississauga, Ontario L4W5M4
Tony.Loparco@ontario.ca Dear Director Loparco:

RE: Ontario Human Rights Commission Inquiry

For over a decade, the Ontario Human Rights Commission (OHRC) has raised concerns about anti-Black racism in policing in Toronto. Carding and other practices that have a disproportionate negative impact on Black persons have eroded trust in police, which is essential to effective policing, and ultimately, public safety.

Under the authority of section 31 of the Ontario *Human Rights Code* (Code) the OHRC is conducting an inquiry into potential racial profiling of, and racial discrimination against, Black persons, including in use of force, by the Toronto Police Service (TPS).

The Special Investigations Unit (SIU) has documents and things that are relevant to this inquiry. Pursuant to subsections 31(7) and 31(8) of the *Code* (see Appendix 'A'), the OHRC seeks documents and things from the SIU pertaining to all SIU investigations of TPS officers that were initiated, completed, and closed between January 1, 2010 and June 30, 2017 and ongoing SIU investigations of TPS officers that were commenced on or before December 31, 2016.

The OHRC requests the full and complete investigative file of every case when the SIU:

a. Fully investigated and laid criminal charges against the officer;
b. Fully investigated and determined that charges were not appropriate; and
c. Is engaged in an ongoing investigation.

The full and complete investigative file includes, but is not limited to: notes, statements, photographs, pictures, diagrams, medical records, video recordings, audio recordings and all other documents and things created or acquired by the SIU during the course of its investigation.

The OHRC also requests any SIU letters to the Chief of the TPS, responding letters from the Chief of the TPS, and the full and complete SIU Director's report.

Under section 31 of the *Code* (see Appendix 'A'), the SIU is obligated to produce the above-noted documents and things and provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form.

Pursuant to section 31 of the *Code,* and subsections 38(2), 39(1), and 42(1) of the *Freedom of Information and Protection of Privacy Act,* the OHRC is authorized to receive personal information in an inquiry.

To begin the process of providing the above-noted documents and things and assistance to the OHRC, please have your staff contact Sunil Gurmukh (Counsel, Legal Services and Inquiries - Tel: 416-314-4519, E-mail: sunil.gurmukh@ohrc.on.ca) and Reema Khawja (Counsel, Legal Services and Inquiries - Tel: 416-326-9870, E-mail: reema.khawja@ohrc.on.ca) by no later than July 21, 2017.

We look forward to working with you and receiving your assistance in accordance with the requirements of the *Code.* In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and your response may be made public in the future.

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

cc: Hon. Yasir Naqvi, Attorney General
Hon. Marie-France Lalonde, Minister of Community Safety and Correctional Services
Ali Arlani, Assistant Deputy Attorney General
Mark Saunders, Chief of the Toronto Police Service Andrew Pringle, Chair of the Toronto Police Services Board OHRC Commissioners

Appendix A

Inquiries

31. (1) The Commission may conduct an inquiry under this section for the

purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

2. An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006,

C. 30, S. 4.

Production of certificate

3. A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

4. A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

5. The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

6. A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, C. 30, S. 4.

Powers on inquiry

7. A person conducting an inquiry may,

a. request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
b. upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

c. question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

d. use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

e. take measurements or record by any means the physical dimensions of a place;

f. take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

g. require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

8. A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006,

C. 30, S. 4.

Assistance

9. A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

10. A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

11. A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

12. A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,

a. make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

b. return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

13. A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

14. No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, C. 30, S. 4 - 30/06/2008

Search warrant

31. 1 (1) The Commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

a. a person conducting an inquiry under section 31 has been denied entry to any place or asked to leave a place before concluding a search;

b. a person conducting an inquiry under section 31 made a request for documents or things and the request was refused; or

c. an inquiry under section 31 is otherwise obstructed or prevented. 2006,

C. 30, S. 4.

Same

2. Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes of carrying out the inquiry under section 31. 2006, c. 30, s. 4.

Powers

3. A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,

a. to enter any place specified in the warrant, including a dwelling; and
b. to do any of the things specified in the warrant. 2006, c. 30, s. 4.

Conditions on search warrant

4. A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 30, s. 4.

Time of execution

5. An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant. 2006, c. 30, s. 4.

Expiry of warrant

6. A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2006,

C. 30, S. 4.

Use of force

7. The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant. 2006, c. 30, s. 4.

Obstruction prohibited

8. No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2006, c. 30, s. 4.

Application

9. Subsections 31 (11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section. 2006,

C. 30, S. 4.

June 30, 2017

Mark Saunders Chief
Toronto Police Service 40 College Street, Toronto, ON M5G 2J3

Andrew Pringle Chair
Toronto Police Services Board 40 College Street, Toronto, ON MSG 2J3

Dear Chief Saunders and Chair Pringle:

RE: Ontario Human Rights Commission Inquiry

For over a decade, the Ontario Human Rights Commission (OHRC) has raised concerns about anti-Black racism in policing in Toronto. Carding and other practices that have a disproportionate negative impact on Black persons have eroded trust in police, which is essential to effective policing, and ultimately, public safety. Our shared values of public trust and safety depend on a new and progressive approach, grounded in the principles in Ontario's *Human Rights Code* (Code) and accountability for racial discrimination.

Under the authority of section 31 of *Code,* the OHRC is conducting an inquiry into potential racial profiling of, and racial discrimination against, Black persons by the Toronto Police Service (TPS).

Pursuant to subsections 31(7) and 31(8) of the *Code* (see Appendix 'A'), the OHRC requests that the TPS and/or Toronto Police Services Board (TPSB) produce documents and things itemized in numbers 1-14 below pertaining to the period between January 1, 2010 and June 30, 2017.

The OHRC's request includes data that may be held in, but not limited to, the following databases: Criminal Injuries Processing System (CIPS), Field

Information Report (FIR}, and Versadex. Data requested should be produced in Microsoft Access and linked such that:

- Each incident has a unique identifier;
- Each civilian has a unique identifier (please note that their personal information must still be produced}; and
- Incident-based unique identifiers, civilian unique identifiers, names, and dates of birth are formatted consistently throughout.

The OHRC requests that the TPS and/or TPSB produce the following documents and things:

1. Manuals, record layouts, guides, instructions, variable labels, value labels, list of fields, field definitions and all other background documents relevant to the following databases:

a. CIPS;
b. FIR; and
c. Versadex.

2. Any other manuals, record layouts, guides, instructions, variable labels, value labels, list of fields, field definitions and background documents not included in (1) that provide guidance on database input and output of the information contained in (3), (4} and (7) by the TPS.

3. All data, including notes, comments, synopses, and information in free-text fields, including from the "circumstances of investigation" field, recorded during the period between January 1, 2010 and June 30, 2017 on "Person Investigated Cards" (Form 172), "Field Information Reports" (Form 208), "Community Inquiry Reports" (Form 306), "Regulated Interaction Reports", "Community Contacts", "Community Inquiries", "Community Safety Notes", "Community Engagements", "Contact Cards" and "Street Checks" completed or conducted by TPS officers, whether or not they would have been categorized as "Regulated Interaction Reports" had they been submitted on or after January 1, 2017. The patrol zone that the stop took place in and the patrol zone of the civilian's residence should also be included.

4. All data, including notes, comments, narratives, and information in free-text fields, recorded on Use of Force Reports (Form 1 in R.R.O. 1990, Reg. 926} submitted by TPS officers between January 1, 2010 and June 30, 2017, and all data on any records of arrest, occurrence reports, injury reports, and General Offense Reports associated with the incidents where the use of force occurred.

5. Documents and things that describe whether, how and when the information in (3) and (4) is currently stored and accessed during investigations, patrol work and for other purposes by the TPS and/or other police services. This includes storage and access in the Police Information Portal.

6. Documents and things that describe whether, how, and when the information in (3) and (4) was stored and accessed during investigations, patrol work and for other purposes by the TPS and/or other police services between January 1, 2010 and June 30, 2017. This includes storage and access in the Police Information Portal.

7. Data from charges laid and any accompanying arrests made, including form of release/release type and charge disposition where available, between January 1, 2010 and June 30, 2017 for the following charges:

a. Driving while under suspension, contrary to s. 53(1) and s. 53(1.1) of the *Highway Traffic Act;* driving without a valid licence, contrary to s. 32 of the *Highway Traffic Act;* failure to carry a licence and surrender a licence for reasonable inspection, contrary to s. 33(1) and s. 33(2) of the *Highway Traffic Act;* failure to provide reasonable identification on a failure to surrender a licence, contrary to s. 33(3) of the *Highway Traffic Act;* failure to change address or name, contrary to s.9(2) and s. 9(3) of the *Highway Traffic Act;* displaying a licence that has been suspended, altered etc., contrary to s. 35(1) of the *Highway Traffic Act;* driving without a valid permit, contrary to s. 7(1)(a) of the *Highway Traffic Act;* failure to carry a permit, contrary to s. 7(5) of the *Highway Traffic Act;* operating a motor vehicle without insurance, contrary to s. 2(1) of the *Compulsory Automobile Insurance Act;* and failure to carry an insurance card, contrary to s. 3(1) of the *Compulsory Automobile Insurance Act.* Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act,* for each of the charges listed above, must also be included.

b. Charges for possession of a substance, contrary to s. 4(1) of the *Controlled Drugs and Substances Act,* broken down by type of substance. Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act* must also be included.

c. Resisting or wilfully obstructing a public officer or a peace officer, contrary to s. 129(a) of the *Criminal Code;* assaulting a public officer or a peace officer, contrary to s. 270(1)(a) of the *Criminal Code;* assaulting a person with intent to resist or prevent the lawful arrest or detention of himself or another person, contrary to s. 270(1)(b) of the *Criminal Code;* and uttering threats, contrary to s. 264.1(1) of the *Criminal Code.* Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act,* for each of the charges listed above, must also be included.

d. Loitering, contrary to s. 175(1)(c) of the *Criminal Code,* and s.3(a)(3) of chapter 608 (Parks) of the *Toronto Municipal Code.* Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act,* for each of the charges listed above, must also be included.

e. Causing a disturbance, contrary to s. 175(1)(a) of the *Criminal Code; and disturbing the peace, contrary to s. 175(1)(d) of the Criminal Code. Data on any accompanying charges laid under the Criminal Code, Controlled Drugs and Substances Act, and provincial statutes and regulations subject to the Provincial Offences Act, for each of the charges listed above, must also be included.*

f. Trespassing, contrary to s. 2(1)(a) and (b) of the Trespass *to Properly Act;* and trespassing at night, contrary to s. 177 of the *Criminal Code.* Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act,* for each of the charges listed above, must also be included.

g. Failure to comply with a condition of undertaking or recognizance, contrary to s.145(3) of the *Criminal Code;* and failure to comply with conditions of an undertaking, contrary to s. 145(5.1) of the *Criminal Code.* Data on any accompanying charges laid under the *Criminal Code, Controlled Drugs and Substances Act,* and provincial statutes and regulations subject to the *Provincial Offences Act,* for each of the charges listed above, must also be included.

8. Policies, procedures, standing orders, directives, agreements, protocols, training materials and any other documents and things from January 1, 2010

to June 30, 2017, including any updates made during this period, that provide guidance on:

a. Officer use of force;
b. Body-worn cameras;
c. In-car camera systems;
d. Recordings taken by bystanders or witnesses;
e. Any of the offences listed in (7);
f. Forms of release;
g. Arrest processes;
h. Racial profiling, racial discrimination, and racial harassment
i. "Person Investigated Cards" (Form 172), "Field Information Reports" (Form 208), "Community Inquiry Reports" (Form 306), "Regulated Interaction Reports", "Community Contacts", "Community Inquiries", "Community Safety Notes", "Community Engagements", "Contact Cards" and "Street Checks";
j. Bias;
k. Cultural competency; and
    l. The Toronto Anti-Violence Intervention Strategy (TAVIS).

9. Letters, memorandums of understanding or other agreements authorizing the TPS to act as agents for the Toronto Community Housing Corporation to enforce the *Trespass to Property Act.*

10. Documents and things, including research undertaken or commissioned by the TPS or TPSB, from January 1, 2010 to June 30, 2017 that may demonstrate that the TPS and/or TPSB have analyzed or developed systems to review whether the following TPS practices disproportionately impact racialized people:

a. Use of force;
b. Stop and question;
c. Charging;
d. Arrest; and
e. Release.

11. Documents and things from January 1, 201Oto June 30, 2017 that may demonstrate how the TPS and/or TPSB respond to or address racial profiling or racial discrimination involving TPS officers, including findings of racial

profiling or racial discrimination in decisions of the Human Rights Tribunal of Ontario, civil courts and criminal courts, from a disciplinary perspective.

12. Documents and things that demonstrate whether and how the TPS and/or TPSB responded to or addressed the findings in *Abbott v. Toronto Police Services Board,* 2009 HRTO 1909; *McKay v. Toronto Police Services Board,* 2011 HRTO 499; *Maynard v. Toronto Police Services Board,* 2012 HRTO 1220; *Shaw v. Phipps,* 2012 ONCA 155; *R. v. Ahmed,* [2009] O.J. No. 5092 (S.C.J.); *R. v. K.(A.),* 2014 ONCJ 374; *R. v. Smith,* 2015 ONSC 3548; *R. v.*

Thompson, [2016] O.J. No. 2118 (Ont. C.J.); *R. v. Ohenhen,* 2016 ONSC

5782; and *Elmardy v. Toronto Police Services Board,* 2017 ONSC 2074; from a disciplinary perspective.

13. Documents and things from January 1, 2010 to June 30, 2017 that may evaluate TPS and/or TPSB anti-racism initiatives in service delivery.

14. The annual violent crime rate and total crime rate in each of Toronto's patrol zones between 2010 and 2017.

Pursuant to section 31 of the *Code,* subsections 38(2) and 39(1) of the *Freedom of Information and Protection of Privacy Act* and section 32 of the *Municipal ·Freedom of Information and Protection of Privacy Act,* the OHRC is authorized to receive personal information in an inquiry. We will work with you to address any issues raised by production of personal information covered by the *Youth Criminal Justice Act.*

Under section 31 of the *Code,* the TPS and TPSB are obligated to produce the above-noted documents and things and provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form.

To begin the process of providing assistance and the above-noted documents and things to the OHRC in a suitable format, please have your staff contact Sunil Gurmukh (Counsel, Legal Services and Inquiries - Tel: 416-314-4519, E-mail: sunil.gurmukh@ohrc.on.ca) and Reema Khawja (Counsel, Legal Services and Inquiries - Tel: 416-326-9870, E-mail: reema.khawja@ohrc.on.ca) by no later than July 21, 2017.

We look forward to working with you and receiving your assistance in accordance with the requirements of the *Code.* In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and your response may be made public in the future.

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

cc: Hon. Yasir Naqvi, Attorney General

Hon. Marie-France Lalonde, Minister of Community Safety and Correctional Services

Ali Arlani, Assistant Deputy Attorney General

Tony Loparco, Director of the Special Investigations Unit

OHRC Commissioners

Commission

APPENDIX 'A'

Inquiries

31. (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

2. An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006,

C. **30, S. 4.**

Production of certificate

3. A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4**.**

Entry

4. A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

5. The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

6. A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. **2006, C. 30, S. 4.**

Powers on inquiry

7. A person conducting an inquiry may,

a. request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
b. upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
c. question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;
d. use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

e. take measurements or record by any means the physical dimensions of a place;
f. take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and
g. require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

8. A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, C. 30, S. 4.

Assistance

9. A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

10. A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

11. A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

12. A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,

a. make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and
b. return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

13. A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

14. No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Section Amendments with date in force (d/m/y)

2006, C. 30, S. 4 - 30/06/2008

Search warrant

31. (1) The Commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

a. a person conducting an inquiry under section 31 has been denied entry to any place or asked to leave a place before concluding a search;
b. a person conducting an inquiry under section 31 made a request for documents or things and the request was refused; or
c. an inquiry under section 31 is otherwise obstructed or prevented. 2006, C. 30, S. 4.

Same

2. Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes of carrying out the inquiry under section 31. 2006, c. 30, s. 4.

Powers

3. A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,

a. to enter any place specified in the warrant, including a dwelling; and
b. to do any of the things specified in the warrant. 2006, c. 30, s. 4.

Conditions on search warrant

4. A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 30, s. 4.

Time of execution

5. An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant. 2006, c. 30, s. 4.

Expiry of warrant

6. A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2006, C. 30, S. 4.

Use of force

7. The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant. 2006, c. 30, s. 4.

Obstruction prohibited

8. No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2006, c. 30, s. 4.

Application

9. Subsections 31 (11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section. 2006, C. 30, S. 4.

From: CCO Mail

To: mark.saunders@torontopolice.on.ca; board@tpsb.ca

cc: yasir.naqvi@ontario.ca; marie-france.lalonde@ontario.ca; ali.arlani@ontario.ca; tony.loparco@ontario.ca; COMMISSIONERS

RE: Ontario Human Rights Commission Inquiry

Dear Chief Saunders and Chair Pringle:

The OHRC's letter dated June 30, 2017 mistakenly refers to the "Criminal Injuries Processing System". It should have referred to the "Criminal Information Processing System".".

My apologies for any inconvenience this may have caused.

Sincerely,

Renu Mandhane B.A., J.D., LL.M.
Chief Commissioner

Office of the Chief Commissioner

Ontario Human Rights Commission

180 Dundas Street West, Suite 900,
Toronto, ON
M7A 2R9

From: CCO Mail

Sent: June-30-17 10:00 AM

To: 'mark.saunders@torontopolice.on.ca'; 'board@tpsb.ca'

Cc: 'yasir.naqvi@ontario.ca'; 'marie-france.lalonde@ontario.ca'; 'ali.arlani@ontario.ca'; 'tony.loparco@ontario.ca'; COMMISSIONERS

Subject: Ontario Human Rights Commission Inquiry

Dear Chief Saunders and Chair Pringle, Please see letter attached.

Sincerely,

Renu Mandhane B.A, J.D., LL.M.

Chief Commissioner

Office of the Chief Commissioner
Ontario Human Rights Commission
180 Dundas Street West,

Suite 900,
Toronto, ON
M7A 2R9

Phone: 416 314 4536   Fax: 416 314 7752

Appendix 11 - OHRC Survey

OHRC Inquiry – Survey for Toronto Police Service officers

The Ontario Human Rights Commission (OHRC) is conducting this survey to support its public inquiry into anti-Black racism by the Toronto Police Service (TPS). It is working with the TPS, the Toronto Police Services Board (TPSB), the Toronto Police Association (TPA) and Black communities to make sure this work results in comprehensive, positive and meaningful action.

In the spirit of cooperation, the TPS, TPSB, TPA and the OHRC have agreed to make sure the inquiry includes a broad range of policing and community safety and well-being perspectives. The OHRC believes this survey provides an important opportunity to hear the diverse views of TPS officers.

TPS uniform officers below the rank of Inspector are invited to complete the survey to share their perspectives on issues of racism, particularly anti-Black racism, both within the TPS and related to interactions with members of the public. The survey findings will inform the findings of the inquiry's final report intended for release in the coming year.

This survey is confidential. We will take all reasonable steps to make sure the personal information you provide is treated confidentially and is only used for the intended purpose. Please read the Notice of collection of information on the next screen for more details.

The survey will take approximately 15 minutes to complete. If you are having difficulty or need help completing this survey, contact the OHRC by phone at 437-788-7943 or by e-mail at surveys@ohrc.on.ca.

Notice of collection of information

Purpose

The purpose of collecting information in this survey is to understand and report on the perspectives of TPS uniform officers below the rank of Inspector on issues of racism, particularly anti-Black racism, both within the organization and related to interactions with the public.

Legal authority for collecting personal information

Section 31 of the Human Rights Code allows the OHRC to collect information as part of conducting a public interest inquiry. This collection is also consistent with s. 38(2) of the Freedom of Information and Protection of Privacy Act (FIPPA).

Limiting use and disclosure of personal information

The OHRC recognizes the importance of protecting personal information, protecting human dignity and maintaining public trust and confidence. We will take all reasonable steps to ensure that the personal information you provide is treated confidentially and is only used for the purposes it was collected for. We will take all reasonable steps to prevent unauthorized access, use or disclosure of your personal information as directed by FIPPA. For more information see our **Protection of personal information and privacy safeguards policy**.

Analysis of and reporting on the data

The OHRC will report publicly on the inquiry process, findings and recommendations. Data and information obtained through this survey,

including the response rate, will be de-identified and/or reported in aggregate form. No personal information will be disclosed without the prior informed consent of the affected person(s).

Retention schedule for the data

Subsection 5(1) of FIPPA, Regulation 460, requires the OHRC to retain personal information for at least one year after it is used, unless the person the information pertains to consents to its earlier disposal. The OHRC will destroy all copies of data sets containing personal information as soon as is reasonably possible after they are no longer required.

Questions

Questions about information collected by the OHRC in this survey can be directed by phone at 437-788-7943 or by e-mail at surveys@ohrc.on.ca.

All inquiries will be kept strictly confidential.

We require your express consent to collect the information in this survey for the purpose described above.

- a. I agree to the use of my survey information for the purpose described above.
- b. I do NOT agree and understand this means I will not be able to do the survey.

We require your first and last name or badge number for participation in the survey. The information will be kept confidential:

- a. I agree to provide my first and last name, and/or badge number:
- b. I do NOT agree to provide my name or badge number and understand this means I will not be able to do the survey.

Thank you for agreeing to do this survey.

We will start the survey with a few questions about your occupational status.

This survey is only for uniform officers below the rank of Inspector of the TPS.

Are you currently a uniform officer with the Toronto Police Service?

- a. Yes, I am currently a uniform officer of the TPS below the rank of Inspector
- b. No, I am NOT currently a uniform officer of the TPS below the rank of Inspector

What is your current rank?

- a. Cadet in training
- b. 4th class Constable
- c. 3rd class Constable
- d. 2nd class Constable
- e. 1st class Constable
- f. Sergeant / Detective
- g. Staff Sergeant / Detective Sergeant
- h. I prefer not to say

Altogether, how long have you been a uniform officer with the Toronto Police Service or with other police services?

    a. 0-3 years
    b. 4-7 years
    c. 8-12 years
    d. 13-20 years
    e. 21 years or more
    f. I prefer not to say

Racism, and its harmful impact, is systemic and pervasive throughout our social institutions across Ontario, including in the school system, child welfare, health care, corrections and policing.

We would like to ask you specifically about systemic anti-Black racism in the TPS.

For each of the following statements, please indicate whether you: Strongly agree, Somewhat agree, Somewhat disagree, Strongly disagree, or Don't know.

There is systemic anti-Black racism in the TPS:

In policing services the TPS provides.

    a. Strongly agree
    b. Somewhat agree
    c. Somewhat disagree
    d. Strongly disagree
    e. Don't know

In employment.

    a. Strongly agree
    b. Somewhat agree
    c. Somewhat disagree
    d. Strongly disagree
    e. Don't know

I am satisfied with the efforts of the TPS and TPSB to address anti-Black racism:

In policing services the TPS provides.

    a. Strongly agree
    b. Somewhat agree
    c. Somewhat disagree
    d. Strongly disagree
    e. Don't know

In employment.

    a. Strongly agree
    b. Somewhat agree
    c. Somewhat disagree
    d. Strongly disagree
    e. Don't know

The TPS provides training, policy guidance and tools on anti-Black racism that guide the way I carry out my duties.

    a. Strongly agree
    b. Somewhat agree
    c. Somewhat disagree

d. Strongly disagree

e. Don't know

Comments (Optional):

TPS officers of any rank who engage in anti-Black racism are held accountable for their actions:

In policing services the TPS provides.

a. Strongly agree

b. Somewhat agree

c. Somewhat disagree

d. Strongly disagree

e. Don't know

In employment.

a. Strongly agree

b. Somewhat agree

c. Somewhat disagree

d. Strongly disagree

e. Don't know

Comments (Optional):

I feel comfortable speaking out or raising issues about anti-Black racism:

In policing services the TPS provides.

a. Strongly agree

b. Somewhat agree

c. Somewhat disagree

d. Strongly disagree

e. Don't know

In employment.

a. Strongly agree

b. Somewhat agree

c. Somewhat disagree

d. Strongly disagree

e. Don't know

Comments (Optional):

The next part of the survey asks for your views about the relationship between Black communities and the TPS as well as what, if anything, should be done about anti-Black racism.

Members of Black communities have repeatedly expressed concerns about their interactions with Toronto police. They have also stated that there is a lack of trust between Black communities and the TPS. These concerns have been reflected in many reports, including the TPSB's report, [Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety](#) (see, for example, page 84).

Why do you think some Black community members feel this way?

What, if anything, would you propose to improve the relationship between Black communities and the TPS?

Systemic racism occurs when institutions or systems create or maintain racial inequity often as a result of hidden institutional biases in policies, practices and procedures that privilege some groups and disadvantage others. This could occur, for example, through traffic stops,

pedestrian stops, arrests, charges, use of force, etc.

Are there TPS practices, procedures, or policies which result in, contribute to or exacerbate inequality, particularly inequality for members of Black communities? If so, how does such systemic racism take place? Please describe.

Is there anything else you would like to add?

We have just three demographic questions about you. These questions are voluntary and will help the OHRC to understand the diversity and unique challenges of the people completing the survey.

The survey is confidential and responses to these questions will not be attributed to you in any way.

What is your age?

What is your gender identity?

    a. Woman
    b. Man
    c. Trans woman
    d. Trans man
    e. Non-binary
    f. Other
    g. Prefer not to say

Which racial group do you identify with?

    a. Black
    b. East Asian
    c. Southeast Asian
    d. Indigenous
    e. Latino
    f. Middle Eastern
    g. South Asian
    h. White
    i. Other racialized group
    j. Prefer not to say

Finally, do you want an OHRC staff person to contact you if we have any follow-up questions about the information you provided or to learn more about your experiences?

As a reminder, this survey and any follow up with OHRC is confidential. Providing your contact information is voluntary.

    a. Yes (Please enter email address and/or phone number)
    b. No

We thank you for your time spent taking this survey. Your response has been recorded.

Visit the OHRC's website for more information about its public inquiry into anti-Black racism by the Toronto Police Service.

TPS Officer Survey Results

The quantifiable results from the TPS Officer survey are included belowi.

There is systemic anti-Black racism in the TPS:	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't know
In policing services, the TPS provides	4%	22%	12%	0%	62%
In employment	5%	16%	12%	0%	66%

I am satisfied with the efforts of the TPS and TPSB to address anti-Black racism:	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't know
In policing services the TPS provides	53%	24%	11%	7%	5%
In employment	46%	24%	7%	12%	12%

The TPS provides training, policy guidance and tools on anti-Black racism that guide the way I carry out my duties.	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't know
	52%	27%	12%	8%	1%

TPS officers of any rank who engage in anti-Black racism are held accountable for their actions:	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't know
In policing services the TPS provides	41%	26%	6%	11%	17%
In employment	38%	20%	6%	12%	24%

I feel comfortable speaking out or raising issues about anti-Black racism:	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't know
In policing services the TPS provides	54%	20%	10%	11%	5%
In employment	48%	18%	7%	10%	19%

Summary of qualitative responses

In addition to rating their agreement with the statements above, officers were asked to respond to the following questions:

- Members of Black communities have repeatedly expressed concerns about their interactions with Toronto police. They have also stated that there is a lack of trust between Black communities and the TPS. These concerns have been reflected in many reports, including the TPSB's report, Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (see, for example, page 84). Why do you think some Black community members feel this way?
- What, if anything, would you propose to improve the relationship between Black communities and the TPS?
- Systemic racism occurs when institutions or systems create or maintain racial inequity often as a result of hidden institutional biases in policies, practices and procedures that privilege some groups and disadvantage others. This could occur, for example, through traffic stops, pedestrian stops, arrests, charges, use of force, etc.
- Are there TPS practices, procedures, or policies which result in, contribute to or exacerbate inequality, particularly inequality for members of Black communities? If so, how does such systemic racism take place? Please describe.

In their responses to these questions, the majority of respondents expressed that they did not believe that there is racial discrimination within TPS practices, or that TPS practices requires change. Some respondents suggested that racial disparities result from the composition of low-income neighbourhoods, which receive disproportionate scrutiny from police because of their rates of street crimes and this causes members of Black communities mistrust the TPS.

One respondent noted that officers are trained to maintain an authoritative position during interactions with the public for their own safety, which likely contributes to negative experiences for the public. Some officers acknowledged that past incidents and practices, such as carding, disproportionately impacted Black communities and likely degraded trust towards the TPS. Some officers recommended publicly releasing service data for transparency and communicating more with Black communities to discuss how to address community mistrust.

Some respondents claimed that racial discrimination exists in employment at the TPS and that they expected that they would face reprisal for reporting workplace issues.

Officers who identified as Black raised concerns about the fairness of promotions opportunities.

Demographic Data

What is your current rank?

Cadet in training	4th class Constable	3rd class Constable	2nd class Constable	1st class Constable	Sergeant / Detective	Staff Sergeant / Detective Sergeant	I prefer not to say
0%	1%	2%	3%	50%	29%	12%	4%

Altogether, how long have you been a uniform officer with the Toronto Police Service or with other police services?

0-3 years	4-7 years	8-12 years	13-20 years	21 years or more	I prefer not to say
5%	4%	4%	35%	49%	2%

What is your gender identity?

Woman	Man	Trans woman	Trans man	Non-binary	Other	Prefer not to say	No response
12%	80%	0%	0%	0%	0%	8%	1%

Which racial group do you identify with?

Black	East Asian	Southeast Asian	Indigenous	Latino	Middle Eastern

8%	3%	3%	2%	0%	1%

South Asian	White	Other racialized group	Prefer not to say	No response
5%	54%	6%	18%	1%

Other racial identities: Mixed identity, Russian, White immigrant The average reported age of respondents was 46

i Percentages may not total 100% due to round

List of Abbreviations

List of Abbreviations

ACE	Adverse childhood experience
ACLU	American Civil Liberties Association
ACT	Assertive Community Treatment
Addendum Report	*Additional Benchmarking of TPS Use of Force and Charge Data* (OHRC)
AI	Artificial intelligence
Anti-Racism Data Standards	Data Standards for the Identification and Monitoring of Systemic Racism
AOJO	administration of justice offence
ARAP	Anti-Racism Advisory Panel (TPSB)
Bill C-5	Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*
Bill C-75	*An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other*

	Acts
BISN	Black Internal Support Network (TPS)
BLAC	Black Legal Action Centre
BPD	Baltimore Police Department
BWC	Body-worn camera
CABL	Canadian Association of Black Lawyers
CABR	Confronting Anti-Black Racism unit
CACP	Canadian Association of Chiefs of Police
CAPP Report	*Community-Based Assessment of Police Practices Contact Carding in 31 Division Report* (CAPP Report)
CCDP	9-1-1 Crisis Call Diversion Pilot
CCSSP	Community Crisis Support Service Pilot program
CDSA	*Controlled Drugs and Substances Act*
CEWs	conducted energy weapons
Charter	Canadian Charter of Rights and Freedoms
Code	*Ontario Human Rights Code*
Commission	Commission on Systemic Racism in the Ontario Criminal Justice System
CPE	Center for Policing Equity
D.O.J.	Department of Justice
EIHR	Equity, Inclusion and Human Rights Unit
EIS	Early intervention system

Framework	*Framework for change to address systemic racism in policing*
GO Report	General Occurrence Report
HRTO	Human Rights Tribunal of Ontario
IPC	Information Privacy Commissioner
IR	Injury Report
IPC	Information and Privacy Commissioner
Inquiry	An inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (OHRC)
IDI	Intercultural Development Inventory
Incident Response	TPS 15-01 Incident Response (Use of Force/De-escalation) procedure
ISTP	In-Service Training Program
MCIT	Mobile Crisis Intervention Team(s)
MCSCS	Ministry of Community Safe and Correctional Services
MHAAC	Mental Health and Addictions Advisory Committee
MHAAP	Mental Health and Addictions Advisory Panel
O. Reg. 58/16	Ontario Regulation 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties
OACP	Ontario Association of Chiefs of Police
OHRC	Ontario Human Rights Commission
OIPRD	Office of the Independent Police Review Director
OR	Odds ratio
PACER Report	*Police and Community Engagement Review (The PACER Report)*

Police Reform Report	*Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety (Police Reform* Report)
PSA	*Police Services Act*
Procedure	Search of Persons Procedure
Procedure 15-20	Body Worn Camera (TPS)
Project Charter	Human Rights Project Charter (OHRC, TPSB, TPS)
RBDC Policy	Race-Based Data Collection, Analysis and Public Reporting Policy
RIPD	Racial and Identity Policing Board (California)
RIRP	Regulated Interactions Review Panel
SIU	Ontario Special Investigations Unit
SQS	Stop, question and search
SQS Report	*Racial profiling and the Toronto Police Service: Evidence, consequences, and policy options*
TPA	Toronto Police Association
TPC	Toronto Police College
TPS	Toronto Police Services
TPS 15-01	Incident Response (Use of Force/De-escalation)
TPSB	Toronto Police Services Board
UCR	Uniform Crime Reporting
UFR	Use of Force Report