Race-Based Data Analysis Framework
Tell Us What You Think

Toronto Police Service is engaging with internal Service members, community organizations, key stakeholders and subject matter experts to help guide its approach to the analysis and public reporting of race and identity-based data.

A Race-Based Data Analysis Framework is intended to be a living document that is regularly updated to reflect the progressive implementation of the Policy and advances in racial equity analysis, statistical methodologies, and data collection methods.

We share a draft Framework for your review. In the sections below, we ask for your honest feedback, suggestions, concerns and ideas to help us analyse the data and understand our impact to make positive change.
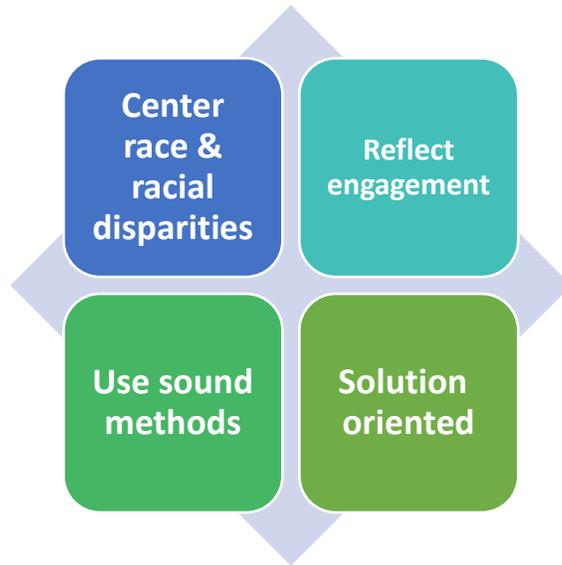
A. Purpose of the Framework

> The purpose of the RBD analysis framework is to promote transparency and support TPS to develop action plans, evaluate the Policy and Service procedures, and identify training needs under the Policy. It reflects and supports the Policy's purpose to identify, monitor and eliminate potential systemic racism and racial bias in policing.

What should be the purpose of the framework? Are there any important aspects missing from the current purpose of this data analysis framework?

> The OHRC maintains that purpose should include identifying, monitoring and eliminating *individual* discrimination in an addition to systemic discrimination. In our [written deputation](#) on the TPSB's Policy in September 2019, we recommended that "action plans include using race-based data to identify potential problematic officer conduct and taking remedial, performance management or other action as necessary. Actions may include early intervention, officer coaching, individualized learning plans and if necessary, discipline. Biased activities will occur less often if there is an understanding that supervisors will review officer conduct and that there will be consequences if officers engage in racial profiling or racial discrimination."

B. Principles

The following set of principles guide the analysis and reporting of race-based data to enable proper implementation of the Policy and support TPS' commitment to identify and address any systemic racism found, inform action plans and strengthen community relationships.

Center race & racial disparities	Reflect engagement
Use sound methods	Solution oriented

Is this set of principles appropriate to guide the analysis and reporting? Is anything missing in alignment with the purpose of this data analysis framework?

Yes, they seem appropriate.

C. Theoretical Framework

In conducting data analyses and interpreting results, we should identify and clearly articulate underlying assumptions and foundational concepts. *A racial equity framework* informs TPS' proposed race-based data analyses through the following underlying understanding:

Race as a social construct	• Racial bias can be conscious or unconscious and be held by individuals or organizations. • Racialization is the process and practice of assigning racial categories and meanings attached to them.
Systemic racism in the criminal justice system	• The criminal justice system impacts groups differently based on race, gender, class, etc. • Crime and law enforcement reflect social and political decisions that reinforce privilege and power.
Police data reflect policing activities	• Data is collected in systems designed for policing purposes and reflect policing practices and activities. • Police data should not be used to draw inferences about communities, but rather about policing.

Is this an appropriate framework for the purpose of data analysis? Are there any important assumptions and/or perspectives that should be considered to inform analyses and interpretation of results?

The racial equity framework should also include individual and systemic racial profiling and racial discrimination in policing, both of which violate the *Human Rights Code* and *Charter* and are discussed in the OHRC's *Policy on eliminating racial profiling in law enforcement*.

There should also be an acknowledgement of anti-Black racism, and systemic racial profiling and racial discrimination of Black people in policing.

Finally, there should be an acknowledgment of how individual and systemic discrimination in policing are often linked (see OHRC written deputation), and how individual discrimination may affect officer decisions regarding stops, searches, charges, arrests, use of force etc. (see OHRC *Policy on eliminating racial profiling in law enforcement*). Overall, this section doesn't appropriately acknowledge individual bias and its consequences.

D. Key Questions

The objective of the analysis framework is to identify, monitor and understand any potential systemic racial disparities in policing outcomes and trends in order to promote professional and equitable policing. To achieve that objective, the following are proposed key research questions that would be the main thrust of analyses:

Are there racial disparities in police interactions with the public? What are the changes over time?

To what extent, if any, are there racial disparities in the *outcomes* of specific interactions? What are the changes over time?

What, if any, are the policies, procedures, practices or programs that may be contributing to racial disparities found?

Are these research questions appropriate to guide the data analysis? Is anything important missing?

These research questions seem appropriate, except for the OHRC's overall concern about how the data is prohibited from being used in officer performance management or discipline.

E. Methodological Approaches

> **1. Quantitative Methods:** Quantitative analyses can be powerful tools, when used properly, to produce insights and identify trends that we may otherwise miss. Quantitative data is also limiting and limited in what it can reveal to us about the root causes of any racial disparities identified.
>
> Methodological approaches guiding race-based data analysis draw from guidance provided by the Anti-Racism Data Standards (ARDS) and the research literature on racial discrimination and racial profiling.
>
> a. **Use disaggregated data and intersectional lens in analyses**
> b. **Comparative focus – racial disparity and racial disproportionality**
> c. **Account for relevant factors and context**
> d. **Establish thresholds to determine whether we are doing well and where we are not.**

Are the proposed quantitative methods/ analytic approaches appropriate to guide the data analysis? Is it anything important missing?

This section does not appear to put enough weight on racial disparities and disproportionalities when it comes to establishing discrimination.

The draft framework states the following (p. 7):

> Any findings of racial disparities in outcomes do not necessarily mean that systemic racial bias or discrimination is evident. Further qualitative analyses would be needed to better understand why and to what extent racial disparities found may be due to biases, systemic barriers and/or other factors and should be assessed in collaboration with affected communities, external and internal stakeholders.

Guidance from the courts and OHRC policies is important in determining whether disparities or disproportionalities constitute discrimination.

In *Fraser v Canada,* the Supreme Court confirmed that adverse effect discrimination and systemic discrimination both involve a search for a disproportionate impact on a protected group. Two types of evidence are especially helpful in proving disproportionate impact:

1. Evidence about the situation of the protected group, including the "physical, social, cultural or other barriers which provide the full context" of the group's situation. "This evidence may come from the claimant, from expert witnesses, or through judicial notice"
2. Evidence about the outcomes of the law, policy or practice at issue. "Evidence about the 'results of a system' may provide concrete proof that members of protected groups are being disproportionately impacted…This evidence may include statistics, especially if the pool of people adversely affected by a criterion or standard includes both members of a protected group and members of more advantaged groups."

"Neither is mandatory and their significance will vary depending on the case."

Both kinds of evidence are not always required. For example, "clear and consistent statistical disparities can show a disproportionate impact on members of protected groups, even if the precise reason for that impact is unknown."

See *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 51 – 67.

The OHRC's *Policy on eliminating racial profiling in law enforcement* states that (section 4.1.1):
> Numerical data showing that members of Indigenous or racialized communities are disproportionately represented in stops, searches, arrests, charges, use of force incidents, etc., may be strong circumstantial evidence that discriminatory practices exist.

Indeed, some disproportionalities and disparities are more probative of racial profiling or racial discrimination. For example, the over-representation of Black people in single charges for cannabis or non-cannabis drug possession, out-of-sight driving offences, failure to comply and uttering threats is particularly probative of racial profiling and systemic racial discrimination (see p. 23-24 of *Racial Disparity in Charges and Arrests* – Dr. Wortey's expert report)

B2.B – Benchmarking and B2.C – Multivariate analysis

Selecting appropriate benchmark

The TPS should be careful about benchmarking based on TPS arrests of TPS arrests for violent crime or controlling for TPS arrests or TPS arrests for violent crime. In other words, the TPS should be cautious about claiming that they explain disparities and thus, there is no discrimination. These statistics themselves rely on data that may be influenced by racial bias and may not be appropriate.

As Dr. Wortley indicated in his slides for the technical briefing on *A Disparate Impact*, "benchmarking on crime rates also has its weaknesses. It assumes that the people being arrested for violent crime are the same people that are involved in police use of force incidents. As stated in the report, this is often not the case."

Indeed, *A Disparate Impact* indicated that 55.6% of Black people and 45.5% of White people did not have a criminal record in SIU use of force investigations between 2013 and 2017. Furthermore, in lower-level use of force incidents between 2016 and 2017, 42.6% of Black people and 48.2% of White people did not have a criminal record.

He also stated the following in the conclusion of his expert report about use of force that was part of *A Disparate Impact* (p. 136):
> One limitation with our findings is that the current data was not able to statistically control for race-specific crime rates. However, the availability of such data – and the documentation of racial differences in criminal behaviour – cannot alone be used to justify police use of force in individual cases. The police cannot use force on an individual just because they belong to a "high-crime" group.

The Center for Policing Equity summarized related methodological issues (Center for Policing Equity, The Science of Justice: Race, Arrests and Police Use of Force (2016) https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf):

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. This discourages scientists from benchmarking police outcomes by arrest rates.

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2. Qualitative Methods: Disparity and disproportionality analyses using quantitative data, alone, cannot tell us what the specific contributing factors are behind disparate outcomes and what actions we should take to mitigate and minimize these factors. This requires gathering other kinds of information to complement, enhance and enrich our understanding so that we can work with communities, stakeholders and partners to identify effective solutions.

a. Talk to people to understand their lived experiences.
b. Review and audit policies and procedures
c. Observe and evaluate practices and behaviours

Are the proposed qualitative methods/ analytic considerations appropriate to complement the quantitative analyses and help us to better understand the results? Is anything important missing?

Yes, they seem appropriate.

F. Interpreting and Reporting the Results

Interpreting and reporting results of quantitative and qualitative analyses should be informed by the input of affected communities, subject matter experts, and internal and external stakeholders.

Analyses and findings should support identifying areas for effective solutions and action plans to improve service delivery, training and program development. Results shall not be interpreted or used to stigmatize communities.

TPS is committed to publicly reporting of analyses and action plans. By taking an *open by default* approach that protects personal privacy, analyses, results and data can be used to contribute to robust public knowledge-building and organizational transparency.

How should TPS present and report results of analyses? How can we make data as open as possible while protecting privacy and mitigate against misuse of information?

Publicly available data must allow for meaningful external analysis. We recommend consulting with the IPC about privacy issues.

We agree that the data must be used in a manner consistent with the *Code*.

G. Other Feedback

Please share any further thoughts, ideas, hopes, and concerns you'd like for us to consider in the Race-Based Data Analysis Framework.

Thank you!

Your input will help us to finalize TPS' analytic framework and be open, transparent, and balanced in how we look at and understand our data.