

INTERIM REPORT

A DISPARATE IMPACT

Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service



**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

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Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service

Ontario Human Rights Commission

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Executive summary

Black people are more likely to be arrested by the Toronto police.

Black people are more likely to be charged and over-charged by the Toronto Police.

Black people are more likely to be struck, shot or killed by the Toronto police.

Toronto Police Service data, obtained by the Ontario Human Rights Commission (OHRC) as part of its inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (TPS), confirms what Black communities have told us – that they are subjected to a disproportionate burden of law enforcement in a way that is consistent with systemic racism and anti-Black racial bias.¹

TPS data ranging from 2013 to 2017, collected and analyzed by a team of experts, reflects the many ways Black communities are over-charged and over-policed, ranging from laying low-quality discretionary charges to police use of force, with all of its negative and detrimental physical and emotional consequences.

1) Black people are grossly over-represented in discretionary, lower-level charges and are more likely than White people to face low-quality charges with a low probability of conviction.

- 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 under-represented.
- Black people represented 35.2% of people involved in "out-of-sight" driving charges (such as driving without valid insurance), which are charges that only arise after a stop has already taken place, suggesting other motives for the stop.

¹ The reports discussed below were prepared by Dr. Scot Wortley and his research team. This executive summary was prepared by the OHRC.

- 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 over-represented in cases that resulted in a withdrawal of charges; and their cases were also less likely to result in a conviction compared to cases involving White people.

2) Black people are significantly over-represented in all use of force cases involving the Toronto police.

- As previously reported in [A Collective Impact](#), Black people were significantly over-represented in SIU investigations of serious injury, death or allegations of sexual assault relative to their representation in the general population. SIU data showed that Black people were over-represented in use of force cases (28.8%), shootings (36%), deadly encounters (61.5%) and deaths caused by police shootings (70%).
- Black people were grossly over-represented in TPS 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 Special Investigations Unit's (SIU) "serious injury" threshold.
- The lower-level use of force rate for Black people was five times greater than the rate for White people and 11 times greater than the rate for other racialized people.
- Black people were more likely to be involved in use of force cases that involved proactive (for example, when an officer decides to stop and question someone) rather than reactive policing (for example, when the police respond to a call for assistance). On the other hand, White people were more likely to be involved in use of force cases that involved reactive policing.
- The significant over-representation of Black people in SIU investigations and their gross over-representation in lower-level use of force incidents cannot be explained by factors such as patrol zones in low-crime and high-crime neighbourhoods, violent crime rates and/or average income. The over-representation remained constant and significant even after controlling for these factors, suggesting that race was a much stronger predictor of police use of force.

Background to *A Disparate Impact*

In November 2017, the OHRC launched a public inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service (TPS), to help build trust between the police and Black communities. The goal of the inquiry was to pinpoint problem areas and make recommendations.

On December 10, 2018, the OHRC released its first interim report, *A Collective Impact*, which reported Dr. Scot Wortley's findings from data received from the Special Investigations Unit (SIU).

Since then, Dr. Wortley, along with his colleagues Dr. Ayobami Laniyonu, Dr. Maria Jung, and Erick Laming (the research team) completed their analysis of TPS data related to charge, arrest and release, and use of force data. The *Racial Disparity in Arrests and Charges* and the *Use of Force by the Toronto Police Service* reports uncover widespread racial disparities in TPS's charge, arrest and use of force practices.

The research team also looked at theoretical explanations for the disparities, including the presence of systemic racism and/or anti-Black racial bias. The team offered recommendations aimed at reducing the over-representation of Black people in police charges, arrests and the use of force. To better understand the nature of TPS interactions with Black communities, the reports released along with this executive summary should be read in conjunction with *A Collective Impact*.

Racial disparity in arrests and charges: An analysis of arrest and charge data from the Toronto Police Service

The authority to lay charges against an individual can have a serious impact on the life of an accused person. People who have been charged with an offence but not found guilty may have served jail time in pre-trial detention and may be left with a non-conviction record. Given its magnitude, the power to lay charges must be exercised fairly, and in compliance with the *Criminal Code*, the *Charter of Rights and Freedoms* and human rights laws. However, the data examined in *Racial Disparity in Arrests and Charges* tells us that Black people are far more likely to be subjected to police charges, with all the consequences that this might entail. This raises serious questions about the fairness and legitimacy of TPS charge and arrest practices.

Methodology and data

Scholars have long suggested that racial disparities are most likely to arise when police officers have significant discretion in deciding to lay a charge. Officers generally have more discretion in laying charges for less serious matters. For example, an officer likely has no choice but to lay a charge for a firearm-related offence. On the other hand, an officer on foot patrol who sees two teenagers consuming an illegal drug in a park has several options:

1. They can ignore the violation and walk by
2. They can approach the youths and informally ask them to desist
3. They can issue a formal warning or caution
4. They can apprehend the teenagers and recommend a pre-charge diversion
5. They can level a criminal charge.

In *Racial Disparity in Arrests and Charges*, the research team focused on identifying how race can affect arrest and post-arrest decisions. Based on previous research, consultations with Black communities and the criminal law bar, the team focused on nine offences likely to involve the exercise of police discretion:

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.

Findings

In data from 2013 to 2017, Black people were grossly over-represented in every charge category examined and significantly more likely than White people to be charged and arrested. Although they represent only 8.8% of Toronto's population, Black people represented 32.4% of the charges. This charge rate was 3.9 times greater than for White people, and 7.1 times greater than the rate for people from other racialized groups.

Over-representation was particularly high in obstruct justice charges, cannabis possession and out-of-sight driving offences.

a) Obstruct justice charges

During the study period, Black people were grossly over-represented in obstruct justice charges. Although they represent only 8.8% of Toronto’s population, Black people represent 42.5% of people involved in obstruct justice charges. They are 4.8 times more likely to be charged with an obstruct justice offence than their representation in the general population would predict. By contrast, White people and people from other racialized groups are under-represented.

This raises concerns of systemic racism and anti-Black racial bias given the highly-discretionary nature of charges related to obstruction of justice.

b) Cannabis and drug possession

Black people were grossly over-represented in both cannabis and “other” drug possession charges. Although they represent only 8.8% of Toronto’s population, Black people represented 37.6% of people involved in the cannabis possession charges. Black people represented 28.5% of people involved in the other (non-cannabis) drug possession charges. They were 4.3 times more likely to be charged with cannabis possession offences than their representation in the general population would predict, and 3.2 times more likely to be charged with “other” drug possession offences – even though conviction rates and many studies show that Black people use cannabis at similar rates to White people, and do not use other types of illicit drugs as often as other racial groups.

These findings support previous research and raise concerns of systemic racism and anti-Black racial bias, because the over-representation of Black people in drug possession charges does not align with what is known about drug use within Black communities.

c) “Out-of-sight” driving offences

Black people were grossly over-represented in charges relating to “out-of-sight” driving offences, which only surface after an officer decides to check a driver’s licence plate or stop the vehicle. Although they represent only 8.8% of Toronto’s population, Black people represented 35.2% of people involved in these charges. They were four times more likely to be charged with an “out-of-sight” driving offence than their representation in the general population would predict, while both White people and people from other racialized groups were under-represented in these charges.

These disproportionate numbers raise concerns of systemic racism or anti-Black racial bias. Out-of-sight driving offences, by their very nature, are typically the result of proactive policing practices, where an officer uses their discretion to check a vehicle’s licence plate or

stop a driver before they are aware that the driver may be implicated in an offence. In many of these situations, an officer will have observed the race of the driver before making the decision to pull them over.

Impact of sex

Black males were particularly over-represented in the charge and arrest dataset. While they represent only 4% of Toronto's population, they were involved in almost one-third – 29.1% – of the charges. The overall charge rate for Black males was 4.5 times higher than the rate for White males, and 7.5 times higher than the rate for males from other racialized groups.

Black females were also over-represented in the charge statistics, albeit to a lesser extent than males. The overall charge rate for Black females was 2.4 times higher than the rate for White females, and 6.2 times higher than the rate for females from other racialized groups. When the charge rates for Black and white females are compared, the disparities were largest for out-of-sight driving violations, obstruct justice and disturbing the peace offences. Black females were 4.8 times more likely to be charged with out-of-sight driving violations, 4.1 times more likely to be charged with obstruct justice and four times more likely to be charged with disturbing the peace.

d) Case disposition

Despite being charged at a disproportionately higher rate, cases involving Black people were less likely to result in a conviction than those involving White people. The research team found this consistent with the argument that due to racial bias, Black people are more likely to face low-quality charges with a low probability of conviction. This finding also undermines the suggestion that Black people face more charges because they are more likely to be involved in unlawful conduct that would end in conviction.

The data also confirms that Black people were over-represented in charges that were withdrawn. This further undermines the suggestion that they face more charges because they are more engaged in unlawful conduct. Instead, the data suggested that Black people routinely faced charges that have a low prospect of conviction. In fact, almost half of all charges in the dataset (49.7%) regardless of race, were withdrawn, and 5.7% were dismissed or stayed. Only 20.2% of all the charges studied resulted in conviction. Determining whether these outcomes are the result of over-charging or of other factors in the criminal justice system is beyond the scope of this report. But even so, it is clear that Black people disproportionately face the burden of these charging practices, which raises concerns about systemic racism.

Use of Force by the Toronto Police Service report

The *Use of Force Report* includes one of the first Canadian studies to examine the intersection between race and police use of force using disaggregated race-based data. The research team looked at data from incidents where serious injury or death occurred (the statutory threshold for determining whether the SIU will investigate), as well as data from lower-level use of force incidents where the SIU was not engaged.

SIU investigations

As set out in *A Collective Impact*, Dr. Wortley found that Black people were significantly over-represented in SIU investigations – they were more likely to be subject to police use of force investigations that resulted in serious injury, death or allegations of sexual assault. Black people were also over-represented in SIU investigations of police use of force.

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. Despite making up only 8.8% of Toronto's population, Black people were over-represented in SIU use of force cases (28.8%), shootings (36%), use of force cases that resulted in civilian death (61.5%), and police shooting deaths (70%). Black men make up 4% of Toronto's population, yet were complainants in a quarter of SIU cases alleging sexual assault by TPS officers.

Other factors that may influence use of force

After the release of *A Collective Impact*, the research team conducted further analysis of the SIU data, and found that SIU investigations involving Black people were more likely to result from proactive rather than reactive policing activities. For example, over one-quarter of cases involving Black people resulted from proactive police stops, compared to only 11.1% of cases involving White people.

The research team also 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, the team identified several factors that could arguably be at play when an officer chooses to use force, including civilian characteristics (age, gender, etc.), and situational factors (community setting, civilian behaviour, mental illness, civilian impairment, the presence of a weapon, etc.).

However, after further analysis, the research team found that these factors could not explain the overwhelming over-representation of Black people in SIU investigations and shooting deaths. The over-representation remained significant after controlling for all these other factors.

Ultimately, a person's race remained a significant predictor of whether an officer would use force. This analysis debunks several commonly-held, seemingly neutral or non-discriminatory explanations for the over-representation of Black people in these statistics.

For example, it is a common belief that Black people are vulnerable to police use of force because they are more likely to live in patrol zones with higher crime rates. The research team hypothesized that community crime level may be an important predictor of police use of force, and looked at Toronto's patrol zones. Almost 40% of use of force investigations occurred within high-crime neighbourhoods, which suggests a correlation between community crime and the number of SIU use of force investigations.

However, when it examined the intersection between race and patrol zones, the research team found that Black people were over-represented in police use of force cases in both high- and low-crime patrol zones. Based on this data, patrol zone crime rates cannot explain the over-representation.

The team also analyzed other factors that some might argue have an influence on the use of force, including if the person had a weapon, if they had a mental health disability or other psychological impairment, their behaviour towards the police at the time of the incident, and if they had a criminal history. However, again the research team found that these factors did not account for the over-representation of Black people in use of force data.

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.

As the *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, which each contained different information: an Injury Report (IR); a Use of Force Report (UFR) and a General Occurrence Report (GO Report). The GO Report is the only document that had information on race.

The task involved a manual, labour-intensive process of finding IRs where it was clear that the police had used force on the person at some time during the interaction, and then finding a corresponding UFR. Once an IR was matched with a UFR or remained unmatched, it was then linked to a corresponding GO Report. After matching was completed, all reports were consolidated into a single database that was used to collect and analyze the information from the three reports.

Findings

The research team found that between 2016 and 2017, Black people were grossly over-represented in lower-level use of force incidents, even more than in incidents that resulted in an SIU investigation. Black people were involved in 38.9% of the cases included in the lower-level use of force dataset. On the other hand, White people and people from other racialized groups were under-represented in these incidents.

Black males were particularly over-represented, accounting for 34.5% of all lower-level use of force cases. Although Black females were under-represented in the dataset, the Black female rate was 3.6 times greater than the rate for White females and 25 times greater than the rate for women from other racialized groups.

Black people were grossly over-represented in almost all use of force categories, including the use of a firearm, pepper spray, police strikes, grounding, Taser use and use of police dogs.

Although they represent only 8.8% of Toronto's population, Black people represented:

- 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/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.

Importantly, the data further suggests that while Black people were grossly over-represented in both reactive and proactive forms of police contact, similar to the SIU dataset, the degree of Black over-representation in lower-level use of force incidents was higher for cases involving proactive policing practices such as a traffic stop rather than reactive policing. In contrast, the

data shows that 60.7% of the lower-level use of force cases involving White people began as the result of a call for service, a reactive police practice, compared to only 48.3% of the cases involving Black people.

The gross over-representation of Black people in police lower-level use of force incidents raises concerns of systemic racism or anti-Black racial bias.

Alternative explanations

The research team considered several commonly-held beliefs that might provide a non-discriminatory explanation for the over-representation. One example might be 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 research team found that Black people were still grossly over-represented 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 share of the general population in a patrol zone, the odds that a Black person would experience force were 55 times greater than the odds of a White person. The odds that people belonging to other racialized groups would experience force were 13 times greater than the odds for White people.

While 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 over-represented. The research team said “the data suggest that race is a stronger predictor of police use of force than either crime rate or median household income.”

Next steps and conclusion

The OHRC and the research team will continue their work on the inquiry. Next steps will involve preparing a final report, which will include findings related to our community interviews, police interviews, police procedures, and an examination of accountability measures and practices. The report will also include a series of recommendations to policing stakeholders to address racial discrimination.

The current attention on policing Black lives has primarily focused on police shootings. [A Collective Impact](#), the OHRC’s first interim report on its Inquiry into racial profiling and discrimination against Black persons by the TPS, released in December 2018, conclusively showed that Black people were more likely to be fatally shot by Toronto police than White people or people from other racialized groups.

A Disparate Impact shows that Black people, particularly Black males, are even more likely to be proactively arrested, charged and subjected to uses of force in a wide range of police interactions. This adds an important dimension to the current conversation and reflects the everyday racism Black communities face. These reports and the findings they contain add considerable weight to the groundswell of calls for systemic reform to policing services.

It is clear from both *A Collective Impact* and *A Disparate Impact* that the time for debate about whether systemic racism or anti-Black racial bias exists within the Toronto Police Service is over. It is time for action that results in concrete changes to the institutions and systems of law enforcement that are accountable for the racial disparities found in these two reports.

The TPSB, the TPS, the City of Toronto and the government of Ontario must take immediate, bold action to address systemic and anti-Black racism in policing and to respect and protect Black lives. As steps are taken to reimagine policing through new funding models, policies, procedures and regulations, changes must acknowledge and address the lived experiences of Black people.

1. The OHRC calls on the TPS, TPSB and the City of Toronto to formally establish a process with Black communities and organizations and the OHRC, to adopt legally binding remedies that will result in fundamental shifts in the practices and culture of policing, and address and eliminate systemic racism and anti-Black racial bias in policing.
2. The OHRC calls on the government of Ontario to establish a legislative and regulatory framework to directly address systemic racism and anti-Black racial bias in policing. Provincial law must require all police services in Ontario to, among other things, collect and analyze race-based data across the full spectrum of policing activities, and provide for transparent and effective accountability processes to ensure that officers who engage in racial profiling or discrimination are effectively disciplined.

