



Black Legal Action Centre

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December 4, 2020

Sent Via Email: Antiracism1@ohchr.org and Registry@ohchr.org

Re: Call for inputs for the preparation of the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers”

1. Measures taken to identify, address, reform and remedy systems, institutions, structures, mechanisms, legislation, policies and/or practices that give rise to, perpetuate, entrench and/or reinforce systemic racism, racial discrimination and associated human rights violations against Africans and people of African descent, including those resulting from historical legacies, as relevant.

Federal/Provincial:

From a Federal perspective, Canada’s Throne speech delivered on September 23, 2020 has identified systemic racism as an existing issue within Canada. The Government has explicitly pledged to address systemic racism and has stated that it is committed to doing so in a manner that is informed by the lived experiences of racialized communities and Indigenous Peoples. The speech makes mention of investments of economic empowerment through a Black Entrepreneurship Program. Their speech also speaks to previous actions taken such as the release of Canada’s Anti-Racism Strategy for 2019-2022, the appointment of the first-ever Minister focused on diversity and inclusion and the creation of an anti-racism secretariat.¹ Going forward, the Government has committed itself to: taking action on online hate, going further on economic empowerment for specific communities, and increasing diversity on procurement; building a whole-of-federal government approach around better collection of disaggregated data; implementing an action plan to increase representation in hiring and appointments, and leadership development within the Public Service; and taking new steps to support the artistic and economic contributions of Black Canadian culture and heritage.

Importantly, the Federal Government of Canada has made it very clear that Black Canadians are overrepresented in the criminal justice system and that progress in these very policing and justice systems,

¹ Staff, News. *2020 Throne Speech: Full Transcript*. 23 Sept. 2020, toronto.citynews.ca/2020/09/23/2020-throne-speech-full-transcript/.

must be made. To this end, they have stated that they will: introduce legislation and make investments that take action to address the systemic inequities in all phases of the criminal justice system, from diversion to sentencing from rehabilitation to records; move forward on enhanced civilian oversight of our law enforcement agencies, including the RCMP; modernize training for police and law enforcement, including addressing standards around the use of force; move forward on RCMP reforms, with a shift toward community-led policing; and accelerate work to co-develop a legislative framework for First Nations policing as an essential service.

The history of Canada, however, is one in which statements made - or even actions taken to address heavily researched, discussed and identified systemic issues - do not necessarily result in a sustained commitment to addressing the issue.

Despite the federal acknowledgement of systemic racism and discrimination, there is no unanimous acknowledgement of the issue among more local forms and government and policing within Canada. For instance, though eventually reneging on initial statements when asked to comment on anti-racism protests in cities across the United States that were sparked by the death of George Floyd at the hands of police, Toronto's premier Doug Ford, was quoted as saying, "Thank God we're different than the United States and we don't have the systemic, deep roots they've had for years."² Ford would eventually state that, "Of course there's systemic racism in Ontario, there's systemic racism across this country." The sentiments of the initial statement are not unique in the Canadian context. In response to anti-racist and anti-police brutality demonstrations in Montreal on May 31, 2020, Quebec Premier Francoise Legault was quoted as saying that, "I think there is some discrimination in Quebec, but there's no systemic discrimination. There's no system in Quebec of discrimination. And it's a very, very small minority of the people that are doing some discrimination."³

We should again note that there exists a history within Canada of public acknowledgment of systemic issues that are divorced from actionable steps to address these issues. In an Open Letter to Premier Ford regarding Anti-Racism Action dated on June 3, 2020 by Michael Coteau, MPP Don Valley East Ontario and Mitzie Hunter, MPP Scarborough—Guildwood, a number of issues were raised regarding the Premier's tangible efforts on the issue.

² Press, The Canadian. *Premier Doug Ford Backtracks on Comment That There Is No Systemic Racism in Canada*. 5 June 2020, nationalpost.com/news/ontario-appoints-former-federal-health-minister-jane-philpott-as-adviser-2-2-2

³ Matthew Lapierre, Local Journalism Initiative Reporter. *Legault Supports Protesters, but Says There's No Systemic Racism in Quebec*. 2 June 2020, montrealgazette.com/news/premier-legault-stands-in-solidarity-with-anti-racism-protesters.

The letter states⁴:

Premier: Yesterday in the Legislature, we stood to ask you whether you believe systemic racism is real and to take concrete action to fight anti-Black racism, particularly by restoring the full funding and scope of work to the Anti-Racism Directorate and the Black Youth Action Plan.

Premier, in your response to our questions, you stated, “The black community always knows I’ll have their backs, and I will always, always have their back. You know it, and you know it”.

With respect, the need to fight systemic racism is about more than past statements or personal good works. It is about reforming and changing the ways in which our society is set up in order that Black, Indigenous and other people of colour are free to live their lives and pursue their livelihoods. As Premier of the province, you need to take clear, direct and continuous action to reform the ways in which our society disadvantages Black, Indigenous and other racialized communities.

Sadly, until now, your government has not taken such action. In fact, you have cut critical programming to fight against racism and in particular to support Black youth.

As it relates to tangible steps, the Premier is being asked in the letter to:

1. Strike a select committee of the Legislature with representation from all parties to review the changes you made to police services, which undid reforms put in place by the previous government, in order to make recommendations on how to reform police services and their interactions with Black and Indigenous people, and people of colour;
2. Restore the cuts you made to OSAP, which was specifically helping Black and other minority ethnic students attain post-secondary education;
3. Restore the \$25 million in funding for youth from low-income backgrounds to receive support and programming at schools;
4. Instruct your Minister of Economic Development to take particular efforts to support entrepreneurship by Black-owned businesses;
5. Support and expand programs to ensure equity and diversity are fostered throughout the Ontario Public Service, so our government reflects the diversity of Ontario;

⁴ “Open Letter to Premier Ford Regarding Anti-Racism Action.” *Mitzie Hunter, MPP*, 3 June 2020, mitziehunter.onmpp.ca/open-letter-to-premier-ford-regarding-anti-racism-action/.

6. Continue with efforts to ensure boards and publicly traded companies implement equity and diversity standards in their senior management;
7. Restore funding to Legal Aid and instruct your Attorney General to bring special focus to legal support for racialized people; and
8. Restore the sub-committees of the Anti-Racism Directorate that worked with various communities, including faith groups, to take action against discrimination, including anti-Semitism, Islamophobia, the effects of colonialism and racism in all its forms.⁵

Additionally, the open letter states that, "Premier, caring and condemning racism are not enough. We need concrete, determined and sustained efforts by your government to create lasting societal change."⁶

Policing

In response to claims of racism and police brutality put forth by Chief Allan Adam of the Athabaskan Chipewyan First Nation in Alberta, RCMP Deputy Commissioner Curtis Zablocki told a news conference in Edmonton that, "I don't believe that racism is systemic through Canadian policing. I don't believe it's systemic through policing in Alberta."⁷ This is far cry from statements made by Ottawa Chief of Police Peter Sloly who stated that:

Systemic racism exists within all Canadian institutions. Further, these institutions are interdependent, interactive and compounding on each other. For example, individual and systemic racism in education, healthcare, social services and housing will directly contribute to the under-pinning elements of crime. Criminal activity will eventually engage the justice system into this cascading set of institutional failures. To dismantle systemic racism (along with all forms of discrimination) in policing, we need to make positive investments in police culture, police operations and the broader institutional ecosystem that the police operate in.⁸

In Ottawa's attempt to remedy the situation, Peter Sloly identified three things that police services should do to build a healthier culture and eliminate systemic racism which included:

⁵ Ibid

⁶ Ibid

⁷ "Alberta RCMP Deputy Commissioner Denies Systemic Racism in Policing in Canada | CBC News." *CBC news*, CBC/Radio Canada, 11 June 2020, www.cbc.ca/news/canada/calgary/alberta-rcmp-racism-policing-1.5605360.

⁸ *Systemic Racism in Policing in Canada - CACP*. www.cacp.ca/index.html?asst_id=2208.

1. Collecting and analyzing disaggregated race-based data;
2. Developing an equity, diversity, and inclusion toolkit to review and update all policies, procedures, and practices; and
3. Identifying and removing all aspects of the organizational culture that sustains systemic racism and/or resists attempts to dismantle it.

In furtherance of this, Sloy has stated that the Ottawa Police Service has committed to making investments in the following three operational strategies:

1. Neighbourhood Policing (NP) – deploying officers into neighbourhoods experiencing higher calls for service, criminality and/or social disorder where they work with local community stakeholders to prevent and address a broad range of community safety and well-being issues.
2. Intelligence Led Policing (ILP) – enhancing the ILP model that will still have crime reduction as a priority but, be fully aligned with the NP model to prevent crime and disorder while getting at the root causes of crime.
3. Community Safety & Well Being (CSWB) – implementing a CSWB plan that brings together the police, education, health, social services along with community stakeholders, to create an integrated service delivery model that proactively assesses individual and community needs and risks, and addresses them in the pre-justice space using a combination of social workers, mental health practitioners and/or police officers.⁹

Much like the lack of unanimity in the views of the government, the lack of overall acknowledgment of systemic racism amongst police means that there will continue to be gaps in addressing the issue within Canada's policing.

Supreme Court of Canada

It can be argued that the comments made in the Supreme Court of Canada judgement of *R v Le*, 2019 SCC 34 and the fact that they have addressed the issue of racial profiling and the disproportionate impact on Black and racialized people may aid in combating entrenched racial discrimination in the criminal justice system.

In addressing Reliable Reports on Race Relations, para [89] states that:

The information necessary to inform the reasonable person is readily available from many sources and authorities which are not the subject of reasonable dispute. Many authoritative studies, research and articles were cited to the Court to help establish the social context of the relationship between the police and racialized communities...This

⁹ Ibid

information about race and policing plays a crucial role and may also inform many issues, including fact finding, credibility assessments, determining what evidence is accepted as persuasive, assessing if there has been a detention and whether it is arbitrary under s. 9, and whether evidence should be admitted under s. 24.

In para [90], there is acknowledgment that:

Members of racial minorities have disproportionate levels of contact with the police and the criminal justice system in Canada (R. T. Fitzgerald and P. J. Carrington, “Disproportionate Minority Contact in Canada: Police and Visible Minority Youth” (2011) 53 *Can. J. Crimin. & Crim. Just.* 449, at p. 450).

In para [97], it was stated that:

We do not hesitate to find that, even without these most recent reports, we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities (see D. M. Tanovich, “Applying the Racial Profiling Correspondence Test” (2017), 64 *C.L.Q.* 359).

Additional Information

There exists a strong history for commissioned reports and studies done within Canada that can be categorized as efforts to identify the issues. Early Ontario reports that spoke to differential treatment of racialized people by police included those of the Walter Pitman Task Force (1977) and a 1979 Report by Gerald Emmett Cardinal Carter to the Civic Authorities of Metropolitan Toronto and its Citizens.

The Judges in *R v Le*, 2019 SCC 34 (CanLII) make reference to 1988 when the Solicitor General of Ontario appointed Clare Lewis as Chair of the Race Relations and Policing Task Force. It was concluded in the Task Force’s 1989 report that concluded that visible minorities believed they were policed differently. The Task Force desired to participate in law enforcement and crime prevention but, are being “denied integration into community life when labelled as crime prone.” Reference was also made to Stephen Lewis’ 1992 *Report to the Premier on Racism in Ontario*. This report looked into the issue of police/visible minority relations which concluded that visible minorities, particularly African Canadians, experienced discrimination in policing and the criminal justice system. Stephen Lewis would later recommend that the Task Force on Race Relations and Policing be reconstituted as a result of perceived inadequacies in the implementation of the 57 recommendations that were made in its 1989 report.”¹⁰

¹⁰ *The Existence of Racial Profiling*, www.ohrc.on.ca/en/book/export/html/2967.

2. The impact of such measures on the enjoyment of civil, political, economic, social and cultural rights, including, but not limited to, measures, mechanisms and procedures taken to identify, address and provide effective remedy and redress for systemic racism and racial discrimination experienced by Africans and people of African descent within law enforcement and the criminal justice system. Please also identify or include related public reports in this regard.

It is difficult to measure the impact of these measures on the enjoyment, civil, political, economic, social and cultural rights on the measures, mechanisms and procedures taken to identify and remedy systemic racism and racial discrimination experienced by Africans and people of African descent.

Practically speaking, “impact” is a loose based term that can be measured in a number of ways. With no clear definition as to what the parameters of “impact” are within the context, a clear answer may be difficult to find. The impact of such measures would also be difficult to identify because many of these measures have only been recently implemented. In addition to this, while a lot has been done to outline many of the issues regarding systemic racism, many of the proposals put forth to remedy the situation have not yet been fully realized or implemented. Some would argue that despite a more pronounced public acknowledgement of existing racism, many of the issues facing Black Canadians still exist.

3. Information regarding specific incidents of alleged violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and people of African descent.

There are some methodological issues that exist as it relates to making reports on specific incidents of violations of human rights by law enforcement. First, because of the potential legal and privacy ramifications of current cases involving these allegations, there exists a real challenge in providing fulsome information on these matters. Additionally, because of gaps as it relates to race-based data with regards to policing in Canada, much of the information is acquired through the media and other news publications.

This information below is taken directly from the Ontario Human Rights Commission report titled, *‘A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service.’*¹¹ Note that this is not an exhaustive list of incidents involving Black Canadians and people of African descent within Canada.

¹¹ “A Collective Impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service.” *Ontario Human Rights Commission*, 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.

| Year | Additional Information |
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| 1978 | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. |
| 1985 | <ul style="list-style-type: none"> Leander Savoury was killed by Toronto Police officer. |
| 1988 | <ul style="list-style-type: none"> 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. |
| 1989 | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> Marlon Neal, 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. |
| 1991 | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> Raymond Lawrence, 22, was shot and killed by two Peel Regional police officers. Two days after Lawrence’s death, several hundred Canadians took to Yonge Street to protest police brutality. The media referred to the event as the Yonge Street Riot or the Yonge Street Uprising. |

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| 1993 | <ul style="list-style-type: none"> • Ian Coley was killed by a Toronto Police officer. |
| 1994 | <ul style="list-style-type: none"> • Albert Moses, 41, was shot and killed in his room in downtown Toronto by Toronto Police officers. The SIU did not lay charges. |
| 1996 | <ul style="list-style-type: none"> • 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 Special Investigations Unit (SIU) did not lay charges. • Andrew Bramwell, 24, was shot and killed by a Toronto Police officer. |
| 1999 | <ul style="list-style-type: none"> • 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. |
| 2006 | <ul style="list-style-type: none"> • 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 Toronto Police Services Board and five officers. |
| 2009 | <ul style="list-style-type: none"> • <i>Phipps v Toronto Police Services Board</i>, 2009 HRTO 877: The Human Rights Tribunal of Ontario found a Black letter carrier was racially profiled by Toronto Police while delivering mail. • <i>Abbott v Toronto Police Services Board</i>, 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. • <i>R v Ahmed</i>, [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 arbitrarily detained because of his race. |
| 2010 | <ul style="list-style-type: none"> • 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. • 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. |

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| | <ul style="list-style-type: none"> 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. |
| 2012 | <ul style="list-style-type: none"> 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. <i>Maynard v Toronto Police Services Board</i>, 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 Ontario Human Rights Commission (OHRC) was a party in this claim. |
| 2014 | <ul style="list-style-type: none"> <i>R v A.K.</i>, 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. 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 individual who had committed robbery. 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 | <ul style="list-style-type: none"> <i>R v Smith</i>, 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 <i>Charter</i> rights. The evidence against Smith was excluded, and he was acquitted of all charges. 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. |

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| 2016 | <ul style="list-style-type: none"> • 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, the police found that Wetlaufer's weapon was a BB gun. The SIU did not lay charges. • <i>R v Ohenhen</i>, 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) <i>Charter</i> rights, excluded the evidence against Mr. Ohenhen, and acquitted him of all charges. • <i>R v Thompson</i>, [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 being beaten in Durham region by an off-duty Toronto Police officer and his brother. Despite the involvement of an off-duty officer, neither the Toronto Police Service nor the Durham Police Service, notified the SIU. Miller's lawyer later notified the SIU who laid charges against the officer and his brother. |
| 2017 | <ul style="list-style-type: none"> • 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 Office of Independent Police Review Director (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 upon arriving at the scene, and discreditable conduct for how officers spoke to a bystander who was filming the event. A Discipline Hearing will be held for the sergeant who used excessive force. • <i>Elmardy v Toronto Police Services Board</i>, 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 <i>Canadian Charter of Rights and Freedoms</i>. 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. |

More recently, Regis Korchinski-Paquet fell to her death from her 24th-floor apartment balcony on May 27, 2020 while police were in her home. Though Ontario's Special Investigations Unit cleared all

officers of wrongdoing, the family maintains that Regis was pushed off the balcony and that the officers should have faced criminal charges.¹²

4. Measures taken to ensure accountability, remedy and redress and address any impunity for human rights violations against Africans and people of African descent, particularly by law enforcement agencies; and the outcomes and effectiveness of such measures. Please also share information about the functioning of accountability mechanisms and associated decision-making processes addressing human rights violations, and identify any patterns or trends in the outcomes of these mechanisms and processes that show or suggest differential experience of Africans and people of African descent with respect to accountability for violations suffered by them. Please also identify or include related public reports in this regard.

Because of a lack of uniformity across Canada (outside of the Country's human rights legislation) in addressing claims of human rights violations against Africans and people of African descent, the uniform measures taken to ensure accountability, remedy and redress and address any impunity within the country's law enforcement agencies, cannot be identified.

Generally, individuals who believe that they have experienced discrimination or harassment have the option to file an application with the appropriate human rights tribunal. There exists the Canadian Human Rights Tribunal (CHRT) which has a statutory mandate to apply the Canadian Human Rights Act (CHRA) based on evidence that is presented and on the case law that exists.¹³

In addition to the CHRT, there exists Provincial & Territorial Human Rights Agencies. These include¹⁴:

- Alberta Human Rights Commission
- British Columbia Human Rights Tribunal
- British Columbia Office of the Human Rights Commissioner
- Manitoba Human Rights Commission
- New Brunswick Human Rights Commission
- Newfoundland and Labrador Human Rights Commission
- Northwest Territories Human Rights Commission

¹² "Family Says They'll Pursue Justice after Police Cleared in Death of Toronto Woman Who Fell from Balcony | CBC News." *CBC News*, CBC/Radio Canada, 27 Aug. 2020, www.cbc.ca/news/canada/toronto/fifth-estate-regis-korchinski-paquet-siu-1.5699999.

¹³ Tribunal, Canadian Human Rights. *New Rules of Procedure under the Canadian Human Rights Act*. 2020. Document. 02 12 2020. <[https://www.chrt-tcdp.gc.ca/index-en.html#:~:text=The%20Canadian%20Human%20Rights%20Tribunal%20\(CHRT\)%20has%20a%20statutory%20mandate,discriminatory%20practice%20under%20the%20Act](https://www.chrt-tcdp.gc.ca/index-en.html#:~:text=The%20Canadian%20Human%20Rights%20Tribunal%20(CHRT)%20has%20a%20statutory%20mandate,discriminatory%20practice%20under%20the%20Act)>.

¹⁴ "Provincial & Territorial Human Rights Agencies." *Provincial & Territorial Human Rights Agencies | Canadian Human Rights Commission*, www.chrc-ccdp.gc.ca/eng/content/provincial-territorial-human-rights-agencies.

- Nova Scotia Human Rights Commission
- Nunavut Human Rights Tribunal
- Ontario Human Rights Commission
- (Ontario) Human Rights Tribunal of Ontario
- (Ontario) Human Rights Legal Support Centre
- Prince Edward Island Human Rights Commission
- (Québec) Commission des droits de la personne et des droits de la jeunesse
- Saskatchewan Human Rights Commission
- Yukon Human Rights Commission

Often times, what is evident is that filed applications related to discrimination on the part of police and law enforcement agents are made at the respective provincial tribunals. These tribunals typically serve as mediums through which settlements can arise through mediation, or can be escalated to a hearing.

According to the Ontario Human Rights Commission's "Strategic Plan 2017 -2022":

"The OHRC's mission is to promote and enforce human rights, engage in relationships that embody the principles of dignity and respect, and create a culture of human rights compliance and accountability. The OHRC accomplishes its mission by exposing and challenging systemic discrimination, and examining incidents or conditions of tension or conflict from a human rights perspective, through education, policy development, public inquiries and litigation."

A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service prepared by the Ontario Human Rights Commission has stated that:

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* with the TPS and TPSB which aimed to embed human rights in all aspects of police operations.¹⁵ ***But, as the OHRC did not have control over developing, prioritizing or implementing the recommendations, the Project Charter failed to enhance independent monitoring or accountability for systemic racial discrimination.***

¹⁵ "A Collective Impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service." *Ontario Human Rights Commission*, 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 ; "Evaluation of the Human Rights Project Charter." *Ryerson University*, www.ryerson.ca/diversity/reports/evaluation-of-the-human-rights-project-charter/.

This statement is indicative of some of the limitations that exist with regards to the execution of measures taken to address human rights violations against Africans and people of African descent, particularly by law enforcement agencies. Much of the long lasting change has to be done from within the law enforcement agencies themselves.

As it relates to the identification of patterns, the lack of uniformity throughout Canada as it relates to the collection of race-based data among human rights tribunal systems, makes it difficult to make a conclusive statement with regards to the differential experience of Africans and people of African descent. What can be more easily identifiable however, are the results of complaints related to the police misconduct that may themselves lead to claims of violations in human rights.

Ontario as a Case Study:

[In terms of accountability mechanisms for police], a significant deficiency in the oversight of policing in Ontario is the lack of true independence in existing civilian oversight entities. In an academic paper titled “Policing the Police: Public Perceptions of Civilian Oversight in Canada”, a study was conducted that revealed that regardless of racial background, most respondents felt that police complaints should be investigated by independent (non-police) investigators. The study went on to reveal that less than 5% felt that complaints should be investigated by police personnel from the same police service.¹⁶ The research suggests that, at the time of the survey, Ontario residents were not getting the type of police oversight that they expected.¹⁷ This was confirmed in the findings of Justice Michael Tulloch who reported that under both the Ontario Civilian Commission on Police Services (OCCOPS) and the Office of the Independent Police Review Director (OIPRD), almost all complaints were investigated and adjudicated by internal or in-house investigators.¹⁸ Other criticisms with the complaints process include: investigation integrity, investigation length, case feedback, case outcomes and disciplinary decisions.¹⁹

In March 2019, Wendy Gillis of the Toronto Star, reported that Gerry McNeilly, who was the OIPRD Director between 2008 and 2019, felt that Ontario’s police complaints system was taking a “step backwards” with new legislation that would reduce the independence of its investigations.²⁰ Gillis reported

¹⁶Kwon, Jihyun, and Scot Wortley. "Policing the Police: Public Perceptions of Civilian Oversight in Canada." *Race and Justice* (2020): 2153368720924560.

¹⁷ Ibid

¹⁸ Tulloch, Michael H. *Report of the independent police oversight review*. Ministry of the Attorney General, 2017.

¹⁹ Kwon, Jihyun, and Scot Wortley. "Policing the Police: Public Perceptions of Civilian Oversight in Canada." *Race and Justice* (2020): 2153368720924560.

²⁰ Gillis, Wendy. "Civilian Oversight Is Taking 'a Step Backwards' in Ford's Overhaul, Outgoing Police Watchdog Says." *Thestar.com*, 30 Mar. 2019, www.thestar.com/news/gta/2019/03/30/civilian-oversight-is-taking-a-step-backwards-in-fords-overhaul-outgoing-police-watchdog-says.html?rf.

that between 2017 and 2018, “the OIPRD referred 1,153 complaints back to the same police services, retaining just 119”.²¹ It is important to note that this revelation was not new. Justice Michael Tulloch (2017) in his findings regarding police oversight had already revealed that the majority of complaints received by the OIPRD were still referred back to the police service that was under scrutiny for an internal investigation. What was evident was that despite being championed for its mandate and efforts, human rights and community organizations have consistently expressed doubt as to the levels of success claimed.²² On October 27, 2020, Nicole Brockbank of CBC News reported that nearly all of the police officers tried in cases before disciplinary tribunals over the span of a decade were able to keep their jobs despite convictions for crimes.²³

Other general deficiencies in police oversight include a lack of transparency into the decision making of entities like the Special Investigations Unit (SIU). This is an oft cited criticism of the body that is still relevant today. Ontario, which has had the longest experience with the SIU model, has consistently struggled with issues of independence, police co-operation and conviction rates.²⁴

In their current form, police oversight bodies do not appear to serve as significant deterrents to police whose actions amount to misconduct in the execution of their duties. Historically, what has become evident is that the decisions that arise from disciplinary mechanisms for police, who have participated in misconduct, have overwhelmingly gone in their favour.

Reports

See below for information taken from the Ontario Human Rights Commission, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*²⁵

²¹ Ibid

²² Kwon, Jihyun, and Scot Wortley. "Policing the Police: Public Perceptions of Civilian Oversight in Canada." *Race and Justice* (2020): 2153368720924560.

²³ "Few Toronto Police Officers Fired despite Criminal Convictions, Discipline Decisions Show | CBC News." *CBCnews*, CBC/Radio Canada, 28 Oct. 2020, www.cbc.ca/news/canada/toronto/toronto-police-discipline-1.5777218.

²⁴ Roach, Kent. "Models of civilian police review: The objectives and mechanisms of legal and political regulation of the police." *Crim. LQ* 61 (2014): 29.

²⁵ "A Collective Impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service." *Ontario Human Rights Commission*, 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.

| Year | Reports and Additional Information |
|------|--|
| 1992 | <ul style="list-style-type: none"> • 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 Ontario government appointed Stephen Lewis to investigate the root causes of the uprising by a multi-racial group of people following the death of Raymond Lawrence. 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. |
| 1995 | <ul style="list-style-type: none"> • 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). |
| 2003 | <ul style="list-style-type: none"> • 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. |
| 2007 | <ul style="list-style-type: none"> • Human Rights Project Charter: The OHRC, Toronto Police Service and Toronto Police Services Board 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. |

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| 2008 | <ul style="list-style-type: none"> 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. |
| 2012 | <ul style="list-style-type: none"> Then Toronto Police Chief William Blair, directed the Chief's Internal Organization Review (CIOR) to examine all aspects of the Toronto Police Service 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 Toronto Police Service could enhance public trust and safety, while delivering bias-free service. |
| 2013 | <ul style="list-style-type: none"> 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 <i>Code</i> and <i>Charter of Rights and Freedoms</i>. The OHRC was critical of the PACER report because, among other things: there was a lack of information about how contact card data was 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. |
| 2014 | <ul style="list-style-type: none"> 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 Toronto Police Service improve overall data collection and analysis systems, including taking steps to improve self-identification rates and collecting demographic information on respondents on both internal and external surveys. The Toronto Police Services Board 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 over-represented in stops in 31 |

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| | <p>Division; African Canadians did not feel free to leave or assert their right to leave when stopped and questioned by TPS officers, and that people in 31 Division overwhelmingly believed that TPS officers engage in racial profiling.</p> <ul style="list-style-type: none"> The OHRC delivered a deputation to the Toronto Police Services Board 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 demonstrate real accountability, up to and including dismissal, when officer behaviour is consistent with racial profiling. |
| 2016 | <ul style="list-style-type: none"> The OHRC provided a submission to the Independent Review of Police Oversight Bodies commissioned by the Government of Ontario. The subsequent report submitted to the Ministry of the Attorney General by the Honourable Justice Michael H. Tulloch put forth a series of recommendations aimed at building public trust in law enforcement, and ultimately increasing public safety. |
| 2017 | <ul style="list-style-type: none"> The OHRC released <i>Under Suspicion: Research and consultation report on racial profiling in Ontario</i>. 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. |

5. Information concerning laws, regulations, policies and other measures taken to prevent and address alleged human rights violations by law enforcement officials against Africans and people of African descent, as well as contribute to accountability, remedy and redress, and the outcomes and effectiveness of such measures.

The 'Report of the Working Group of Experts on People of African Descent on its mission to Canada'²⁶ presented to the United Nations General Assembly on August 16, 2017, gives some insight into the general human rights legislative framework within Canada. It explains that:

Canada has ratified the main international human rights treaties, except for the International Convention on the Protection of All Migrant Workers and Members of Their

²⁶ United Nations. "Report of the Working Group of Experts on People of African Descent on its mission to Canada." 2017. Report. <<https://ansa.novascotia.ca/sites/default/files/files/report-of-the-working-group-of-experts-on-people-of-african-descent-on-its-mission-to-canada.pdf>>.

Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.²⁷

The legal and policy framework to combat racial discrimination and advance substantive equality includes prohibitions on discrimination and intolerance in the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* and federal, provincial and territorial human rights statutes.²⁸ The *Canadian Multiculturalism Act* (1985) acknowledges diversity as a fundamental characteristic of Canadian society. It requires that institutions respect and be inclusive of the country's multicultural character. It also commits itself to the promotion of the full and equitable participation of individuals of all origins while also eliminating barriers to that participation.²⁹ The report states that a number of measures have been taken within Canada to promote diversity and inclusion. Efforts have been made to develop equity legislation, policies, programmes and services at the federal, provincial and territorial levels. Efforts have also been made in the past to take special measures for the advancement of substantive equality groups, such as indigenous peoples.³⁰ Up to the point of when this report was presented, "Canada has not introduced special measures for African Canadians, despite the disparities and systemic anti-Black racism and discrimination they face in the enjoyment of their social, economic and cultural rights."³¹ The report is presumably making reference to federal legislation because it also notes that the province of Ontario had adopted a number of measures aimed at benefitting African Canadians.

On June 1, 2017, the Government passed Bill 114, the *Anti-Racism Act*. The Act recognizes the distinct nature of anti-Black racism and points out the need to address it on an ongoing basis. Under the legislation, the Government of Ontario is required to maintain an anti-racism strategy with the objective of eliminating systemic racism and advancing racial equity. These steps are to include "initiatives to assist racialized groups that are most adversely impacted by systemic racism", including indigenous and Black communities, and targets and indicators to measure its effectiveness, which must be reported on annually. The Government of Ontario is also required under the legislation to review the anti-racism strategy at least every five years. Additionally, any review or revision of the strategy must include consultation with members and representatives of communities that are most adversely impacted by systemic racism.³²

It must be noted that even with legislative developments, the effects are still being felt by groups most adversely affected by racism within Canada. Krista McFadyen, author of *An Aboriginal Perspective on Canada's Human Rights "Culture"* writes that:

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Ibid

Despite seemingly progressive human rights legislation in Canada, the perceptions and experiences of Aboriginal people suggest that there are significant barriers in substantiating rights through current institutions.³³

We argue that the same can be said as it relates to the experiences of Black Canadians and people within Canada who are of African descent.

6. Information concerning Government responses to anti-racism peaceful protests, within the meaning of resolution 43/1, including the alleged use of excessive force against protesters, bystanders and journalists, as well as applicable laws, regulations, policies, practices and other measures, and their impact and effectiveness.

In the absence of official information with regards to more recent anti-racism protests, it is unclear as to whether there have been continuous acts of excessive force against protesters and the extensive Government intervention into local protests, as has been seen in instances in the United States.

Recent History of Anti-Racism Protests in Canada

Following the 2010 G20 Toronto summit protests, the Office of the Independent Police Review Director (OIPRD) conducted a review of police's actions and concluded that:

Upon analysis and review of all available information, the Independent Police Review Director concluded, on the basis of a sufficient body of evidence and reasonable grounds, that excessive force was used during the arrests of members of the crowd. The Director also found that some people who complained of excessive force being used during their arrests could not identify the arresting officers.³⁴

The G20 protests remain one of the most violent and most scrutinized protests in Canada's recent history. The OIPRD reports that prior to the G20 protests, large, violent protests in Toronto had not occurred for some time. Reference is made to a large anti-poverty demonstration in front of Queen's Park that led to a violent altercation between demonstrators and the police. Here, thirty-two people were arrested, and dozens of protesters and police officers were injured.³⁵ The only mention of violence related to anti-racism protests in the report was an incident in 1992. Following the protest, there were two

³³ McFadyen, Krista. "An Aboriginal Perspective on Canada's Human Rights "Culture"." *Cultural and Pedagogical Inquiry* 4.1 (2012).

³⁴ McNeilly, Gerry. *Policing the right to protest: G20 systemic review report*. Office of the Independent Police Review Director, 2012.

³⁵ Ibid

consecutive nights of rioting in the downtown of Toronto that resulted in extensive property damage, looting, and injuries to police officers.³⁶ Over 50 people were arrested.

Demonstrations in Montreal following the killing of George Floyd in Minneapolis, Minnesota were largely peaceful but, ended on a 'violent note' as 11 individuals were arrested for looting that occurred in the protest's final hours.³⁷ Police ordered the demonstrators to disperse but, eventually deployed tear gas as some individuals began breaking the windows of businesses and offices.³⁸

While recent anti-racism demonstrations do not appear to have not garnered the extensive independent review that protests such as the aforementioned G20 summit protests have, reports by the media suggest that many of these protests have been largely peaceful.³⁹

7. Information regarding systems of collection by State authorities of disaggregated data based on race, colour, descent, or national or ethnic origin, and processes for the analysis of such data. In relation to the above-mentioned areas, please provide data disaggregated by race, colour, descent, or national or ethnic origin; as well as additionally by sex, age, economic and social situation, disability, sexual orientation and gender identity, incarceration and other status, where available. Where such information is not available, please indicate reasons why.

In Canada, there exists a dearth of information as it relates to disaggregated data relating to the use of excessive force and other human rights violations by law enforcement officers towards Africans and people of African descent.

The Canadian Race Relations Foundation (CRRF) has stated that:

In Canada the discourse on, and practice of, the collection of data based on race and/or ethnicity, nationality ... has [been] met with resistance within and among communities, governments, public institutions and other sectors. Given the debate on this issue, the increasing representation of racialized peoples in Canada's population, and the increasing support within the international community for the collection of disaggregated data

³⁶ Ibid

³⁷ Montreal Gazette. "11 Arrested during Looting That Followed Peaceful Anti-Racism Protest." *Montrealgazette*, Montreal Gazette, 1 June 2020, montrealgazette.com/news/local-news/11-arrested-more-suspects-being-sought-after-looting-follows-protest-march.

³⁸ Ibid

³⁹ Hannahjacksonglobal. "George Floyd Protests: Anti-Racism Demonstrations Continue across Canada." *Global News*, Global News, 7 June 2020, globalnews.ca/news/7034472/george-floyd-protests-canada/.

(including race), the CRRF believes that the collection of this type of data can provide a useful tool in the struggle to eliminate racism.⁴⁰

Despite widespread public and academic acknowledgement of the importance of this information, it was only in July 2020 that Statistics Canada and the Canadian Association of Chiefs of Police (CACP) committed themselves to enabling police to report statistics on Indigenous and ethno-cultural groups in police reported crime statistics on victims and accused persons.⁴¹ Anil Arora, Chief Statistician of Canada has been quoted as saying that:

Disaggregated data is vital for decision making in multiple sectors and Statistics Canada is committed to working with the CACP to ensure Canada's official police-reported crime statistics reflect indigenous and ethno-cultural groups.⁴²

In 2020, Ontario became the first province in Canada to make it mandatory for its police officers to identify and document the race of a person on whom they have used force.⁴³ This development followed increased incidence of demonstrations against police violence in Canada and heightened attention towards the policing of Canada's Indigenous and Black communities.⁴⁴ Lorne Foster, a professor of public policy and human rights at York University in Toronto was quoted in a CBC News report on race based data as saying that:

By collecting disaggregated race data, you can provide a baseline for conversation. You can provide a baseline for creating a dialogue between police and the citizenry.⁴⁵

Dr. Lorne Foster and Dr. Les Jacobs conducted a study titled 'Traffic Stop Race Data Collection Project II Progressing Towards Bias-Free Policing: Five Years of Race Data on Traffic Stops in Ottawa'.⁴⁶ In it, a number of findings were presented to the Ottawa Police Services Board and the Ottawa Police Service. These include that "middle Eastern and black drivers continue to experience disproportionately high incidences of traffic stops."⁴⁷

⁴⁰ Crrffcr. "A National Policy on the Collection of Race-Based Statistics." *Research*, 14 July 2015, www.crrf-fcr.ca/en/component/flexicontent/item/23598-a-national-policy-on-the-collection-of-race-based-statistics.

⁴¹ Government of Canada, Statistics Canada. "Collection of Data on Indigenous and Ethno-Cultural Groups in Canada's Official Police-Reported Crime Statistics." *Government of Canada, Statistics Canada*, 15 July 2020, www.statcan.gc.ca/eng/about/smr09/smr09_106.

⁴² Ibid

⁴³ "Why Race-Based Data Collection by Police Could Play a Role in Reform Debate | CBC News." *CBCnews*, CBC/Radio Canada, 7 July 2020, www.cbc.ca/news/canada/race-police-data-ontario-1.5636301.

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Foster, Lorne, and Les Jacobs. "Traffic Stop Race Data Collection Project II Progressing Towards Bias-Free Policing: Five Years of Race Data on Traffic Stops in Ottawa." (2019).

⁴⁷ Ibid

Additionally, outside of Ontario, there exists no province wide mandate to collect race based policing data.⁴⁸ Historically, what is evident is that there exists some police services who have themselves carried out pilot projects aimed at data collection. Toronto and Halifax have collected data related to street checks and police carding⁴⁹ while it was reported on June 3, 2020 that Saskatchewan's police oversight body will track race, gender, and ethnicity data on a voluntary basis.⁵⁰ Further evidence of a lack of uniformity in an effort to collect data in Canada can be found in Alberta. On June 17, 2020, Susan Hughson, Executive Director of the Alberta Serious Incident Response Team (ASIRT), which is referred to as Alberta's police watchdog, was quoted in the Edmonton Journal as saying that the organization has not identified a "principal reason" to collect data.⁵¹

Generally, what is evident is that many of these developments are recent ones. As such, there continues to be a significant gap in the information.

8. Mechanisms in place to ensure that Africans and people of African descent and their representatives are appropriately, adequately and sufficiently represented in processes to identify, remove and reform any structures, policies and practices of racial discrimination in institutions of law enforcement and the related administration of criminal justice.

The Federal government has only recently committed itself (through its 2020 throne speech) to introducing legislation and making investments that take action to address the systemic inequities in all phases of the criminal justice system. It does not speak explicitly to ensuring that Black Canadians and people of African descent within Canada are appropriately, adequately and sufficiently represented in these processes.

Policing is the largest component of the criminal justice system within Canada with a budget over \$14 billion.⁵² Police officers within Canada over the course of history have been predominantly Caucasian and male. Only within the last 25 years have police services made a concerted effort to recruit women, Indigenous people as well as visible and cultural minorities.⁵³ Under principles dictated largely by the *Employment Equity Act* 1995, there existed a small number of Canadian police services who adopted

⁴⁸ "Why Race-Based Data Collection by Police Could Play a Role in Reform Debate | CBC News." *CBCnews*, CBC/Radio Canada, 7 July 2020, www.cbc.ca/news/canada/race-police-data-ontario-1.5636301.

⁴⁹ Ibid

⁵⁰ Global News. *Saskatchewan police oversight body to track race, gender, ethnicity data on voluntary basis*. 2020. News Report. <<https://globalnews.ca/news/7019343/saskatchewan-police-oversight-body-race-gender-ethnicity-data/>>.

⁵¹ Short, Dylan. "Head of ASIRT Says Collecting Racial Data Would Be of 'Limited Value'." *Edmontonjournal*, Edmonton Journal, 17 June 2020, edmontonjournal.com/news/local-news/head-of-asirt-says-collecting-racial-data-would-be-of-limited-value.

⁵² Albrecht, James F., Garth den Heyer, and Perry Stanislas. *Policing and Minority Communities Contemporary Issues and Global Perspectives*. Springer, 2019.

⁵³ Ibid

employment equity practices that would give preference to an individual of a target group.⁵⁴ Most policing services today have avoided employment equity practices and have developed, or are in the process of developing, alternative strategies aimed at encouraging applications from qualified individuals from diverse backgrounds. These purported efforts have not been successful as visible minorities still do not have full representation within the police services. Representation does not necessarily translate into effective mechanisms but, would definitely play a significant contributory role in helping to ensure that Black Canadians and people of African descent are a part of reformation efforts.⁵⁵

Further examples of a lack of diversity are evident in the country's Judiciary and on the Canadian Human Rights Tribunal. There are currently no members of the Canadian Human Rights Tribunal, who are Black or of direct African descent.⁵⁶ On September 14, 2020, the Canadian Bar Association (CBA) prepared a letter to the Prime Minister of Canada, the Right Honourable Justin Trudeau, P.C., M.P., and the Minister of Justice and Attorney General of Canada, the Honourable David Lametti, P.C., M.P, regarding the appointment of BIPOC (Black, Indigenous and People of Colour) Candidates to the **Federal** Judiciary. The CBA has acknowledged the government's stated commitment towards making "transparent, merit-based appointments, to help ensure gender parity and that Indigenous Canadians and minority groups are better reflected in positions of leadership."⁵⁷ The CBA also expressed their appreciation for the government's modification of the federal judicial appointment system in 2016 which was intended to increase the diversity of judicial appointments by gathering self-identification data and requiring Judicial Advisory Committee members to receive unconscious bias training. They went to state that:

...We are concerned that these commitments and changes have not resulted in an appreciably more diverse judiciary to date. Between 2016 and 2019, only three percent of federal judicial appointees self-identified as Indigenous. With no race disaggregated data we do not know how many federal judicial appointees identified as Black, but only eight percent identified as visible minorities.⁵⁸ Not collecting this data speaks to the difficulty of making substantive change. It is disconcerting that in 2020 there has never been a BIPOC individual appointed to the Supreme Court of Canada, given the diversity of the legal talent across the country.⁵⁹

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Canada, Government of. "Organization Profile - Canadian Human Rights Tribunal." *Government of Canada*, 24 Aug. 2017, appointments.gc.ca/prflOrg.asp?OrgID=HRTC.

⁵⁷ Trudeau, Justin. "Minister of Justice and Attorney General of Canada mandate letter." *Ottawa: Office of the Prime Minister of Canada* (2015).; ⁵⁷ Trudeau, Justin. "Minister of Justice and Attorney General of Canada mandate letter." *Ottawa: Office of the Prime Minister of Canada* (2019)

⁵⁸ Office of the Commissioner for Federal Judicial Affairs Canada, Statistics regarding Judicial Appointments and Appointees

⁵⁹ Tribunal, Canadian Human Rights. *New Rules of Procedure under the Canadian Human Rights Act*. 2020. Document. 02 12 2020. <<https://www.chrt-tcdp.gc.ca/index->

9. Good practices, challenges and lessons learned regarding measures taken to: (i) combat systemic racism at the national, state/regional and local levels, including as informed by structural and institutional factors; (ii) prevent and address alleged human rights violations against Africans and people of African descent by law enforcement officials; (iii) ensure accountability for human rights violations against Africans and people of African descent and access to effective remedies and redress for such victims of contemporary and associated historical human rights violations; and (iv) ensure appropriate Government responses to anti-racism peaceful protests. Please also identify or include related public reports in this regard.

(i) The deeply embedded and systemic nature of anti-Black racism means that there are no simple solutions to this ongoing issue. Black Canadians and Black people in Canada continue to face barriers rooted in anti-Black racism. These barriers are present in various spheres of everyday life. These spheres include: education, public administration, health care, housing, criminal justice and human rights. Effectively combatting racism in these spaces would require a multifaceted approach that would require development in areas that include, but are not limited to: increased representation of Black and racialized people in decision making processes; accessibility to justice; representation in oversight bodies; increased contribution of accessibility to justice; Black and racialized representation on oversight bodies; increased contribution of people with lived experience of anti-Black racism; funding for programs; diversity at the federal and provincial government levels; anti-Black racist training and teaching; legislation and policy development. Though each sphere is hampered by their own structural and institutional factors, it is important to remember that they are also interrelated. OPS Chief Peter Sloly has himself explicitly stated that systemic racism exists in all Canadian institutions. In furthering his point as it relates to crime, he states that these institutions are interdependent and interactive and compound one another. He adds that:

Individual and systemic racism in education, healthcare, social services and housing will directly contribute to the under-pinning elements of crime...to dismantle systemic racism (along with all forms of discrimination) in policing, we need to make positive investments in police culture, police operations and the broader institutional ecosystem that the police operate in.⁶⁰

It is also important to add that even before establishing 'good practices' that can be used to address these issues, steps must be taken to get widespread acknowledgement of its existence. As has been stated, there still exists individuals in positions of the authority within the Canadian context that still refute the existence of systemic racism. In other instances, public acknowledgement of the issue has only come in 2020 on the heels of the killing of George Floyd. What has become evident is that there are now 'proposals' that have only recently been made.

[en.html#:~:text=The%20Canadian%20Human%20Rights%20Tribunal%20\(CHRT\)%20has%20a%20statutory%20mandate,discriminatory%20practice%20under%20the%20Act>.](#)

⁶⁰ Peter Sloly "Systemic Racism in Policing in Canada" *Presentation by OPS Chief Peter Sloly to the Standing Committee on Public Safety & National Security (2020)*. https://www.cacp.ca/index.html?asst_id=2208

There have only recently been mandates to collect race-based data in spheres, such as criminal justice and education. Even with these developments, these changes are not being made uniformly among public bodies throughout Canada and its provinces. The data may aid by not only substantiating claims that have been historically argued but, may help in determining priority spheres of focus and for ultimately allocating the appropriate resources.

The development of legislation and policies are important but do not provide all the solutions necessary. The Honourable Dr. Hedy Fry, Member of Parliament has been quoted as saying;

"We have all the legislation in place, [the *Charter of Rights*] being the major one...we've employed equity, we have all of the legislation necessary to ensure a society where there's equal opportunity for all regardless. But that does not control societal decision-making."⁶¹

(ii) & (iii) 'Preventing' such acts altogether may prove to be an extremely difficult, if not, impossible task. Ultimately, any sustainable efforts aimed at addressing human rights violations and ensuring accountability will involve a number of steps. Empowering communities through education, increased transparency in entities designated to mediate or adjudicate on human rights matters, increased representation in the legislature, executive and in policing entities may all form some of the means through these aims can be achieved.

(iv) The Canadian government has in the past stated its right to peaceful protests. What appears to be the case as it relates specifically to peaceful anti-racist protests is that the most significant threat to the right to peacefully protest may come from the public authority that is publicly facing the protesters. Ensuring appropriate responses in this regard will be largely impacted by the policies and procedures of the local authorities and the directives received from the applicable governing body.

10. Specific information pertaining to all other aspects of the mandate set out in resolution 43/1, including regarding the situation and perspectives of African women and children and of women and children of African descent, as well as other relevant gender and intersectional dimensions, including discrimination based on colour, sex/gender, economic and social status, disability, or other status.

A discussion paper presented by the Ontario Human Rights Commission titled, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*, provides insight on discrimination on various grounds. Here, it was reported that:

⁶¹ Matthew Lapiere, Local Journalism Initiative Reporter. *Legault Supports Protesters, but Says There's No Systemic Racism in Quebec*. 2 June 2020, montrealgazette.com/news/premier-legault-stands-in-solidarity-with-anti-racism-protesters.

- “In many cases, racial minority women experience discrimination in a completely different way than racial minority men or even women as a gender. Similarly, racial minority men may experience discrimination that would not be faced by non-minority males or even women of the same background. This is because groups often experience distinctive forms of stereotyping or barriers based on a combination of race and gender. An intersectional approach recognizes this.
- A person who belongs to a particular religion may face religious discrimination only if they identify by another ground such as race, colour or ethnic origin or may experience discrimination differently from coreligionists based on the relationship with another ground. Gender can also be a factor that has an impact on religious discrimination.
- Women may be more likely to experience sexual harassment if they are more vulnerable by virtue of another aspect of their experience such as recent arrival in Canada.
- Persons with disabilities may experience particular barriers when they identify by other grounds. For example, during the Commission’s consultations on age discrimination, the Commission was told that for persons with disabilities, aging can result in a disproportionate impact or unique experiences of discrimination. Indeed, statistical evidence confirms the particular disadvantages faced by older persons with disabilities.⁶² Similarly, research indicates that persons with disabilities and persons who are members of racialized groups are more likely to be unemployed or under-employed.⁶³ Therefore, members of racialized groups who have disabilities may be doubly disadvantaged. Aboriginal persons with disabilities face the same problems as other persons with disabilities but these are worsened by jurisdictional issues, namely the lack of disability-related services on reserves and the jurisdictional barriers to accessing services for those who live off reserves.⁶⁴ Evidence also indicates that women with disabilities experience additional disadvantage as a result of the intersection of disability with gender.⁶⁵

⁶² Ontario Human Rights Commission. *Time for Action, Advancing Human Rights for Older Ontarians*. Ontario Human Rights Commission, 2002., supra note 3

⁶³ For example, In Unison: A Canadian Approach to Disability Issues: A Vision Paper (Federal/Provincial/Territorial Ministers Responsible for Social Services, 1998) notes, “persons with disabilities have a lower rate of employment as well as a lower participation rate in the labour force than those without disabilities” (at 36). Similarly, Canadian Race Relations Foundation, *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income* (Prepared for the Canadian Race Relations Foundation by the Canadian Council on Social Development, 2000) describes barriers to employment faced by racialized groups.

⁶⁴ In Unison: A Canadian Approach to Disability Issues: A Vision Paper, *ibid.* at 39.

⁶⁵ “The disproportionate share of domestic responsibilities assumed by women with disabilities has presented significant barriers to their labour force participation and has contributed to increased poverty for many of these women.” *ibid.* at 36. See also: D. Pothier, “Connecting Intersecting Grounds of Discrimination to Real People’s Real Experiences” (Paper Distributed at Transforming Women’s Future: Equality Rights in the New Century: A National Forum on Equality Rights presented by West Coast Leaf, 4 November 1999) [unpublished].

Discrimination on the basis of sexual orientation may be experienced differently by gay men and lesbians as a result of stereotypes around sexuality and relationships. Furthermore, the Commission's Policy on HIV/AIDS-related Discrimination⁶⁶ recognizes that the erroneous perception of AIDS as a "gay disease" may have a disproportionate effect on gay men and may result in discrimination the basis of both sexual orientation and perceived disability."⁶⁷

Thank you for the opportunity to submit our input.

Sincerely,

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⁶⁶ (January 2000), online: Ontario Human Rights Commission.

⁶⁷ For example see *Moffat v. Kinark Child and Family Services (No. 4)* (1998), 35 C.H.R.R. D/205 (Ont. Bd. Inq.).