



Anti-Black Racism in Canada’s Criminal Justice System

Anti-Black racism impacts Black Canadians at every step of the criminal justice system, from policing to pretrial detention to sentencing to prisons. While racism can be overt, malicious and intentional, it often works in much more subtle ways. Everyone has unconscious biases, often based on stereotypes, that they use to inform their thought processes and decision-making. Racial profiling also occurs on a systemic level - when an unjustifiable level of scrutiny and differential treatment becomes ingrained into an organization’s culture and operations. All these forms of racism exist within Canada’s criminal justice system.

Many Canadians, however, are still grappling with this reality. One common response we hear when Black Canadians and their allies decry racism and call for action is that the issues are being exaggerated – that concerns about anti-Black racism about are being inappropriately imported from the United States.

This simply is not true.

Canada has a long and deep history of slavery, colonialism, and racism.

Most of us did not learn about this history in school. But it is there, and the repercussions of this legacy continue to reverberate through contemporary Canadian society and institutions.

So we thought we would take a moment to focus on the magnitude of anti-Black racism at home, and provide a few facts about racial disparities and discrimination in the Canadian criminal justice system.

What follows are some specific findings and figures pulled from a large body of academic work and government reports.¹ We encourage you to read and digest the numbers below, and then

turn to the list of resources at the end of this document to read more about Canada's history of slavery, discrimination, and the current realities facing Black Canadians.

Finally, while this fact sheet focuses on discrimination against Black people in Canada, many of these same issues also impact Indigenous communities and other traditionally over-policed groups, including individuals experiencing homelessness, mental health challenges or addictions.

Policing

Two decades of research have consistently found that Canadian police stop, search, and question Black Canadians at higher rates than members of other racial groups. These trends persist even after you factor out other individual characteristics that might lead to higher levels of police contact, including living in a high-crime community, age, gender, social class, victimization, illegal drug use, criminal history, or routine activities. Higher levels of police surveillance mean that Black people are much more likely to be arrested and charged with criminal offences as compared to White people and members of other racial groups who engage in the same behaviour. Black people are also seriously injured and killed during encounters with the police at significantly higher rates than individuals from other racial backgrounds.

Some specific numbers on racial disparities in police stops and searches:

- An analysis of policing in Halifax in 2019 showed Black people were six times as likely as white people to be stopped and questioned by the police when walking on the street (an activity that is often termed "street checks" or "carding").²
- In 2017, Black people accounted for 5% of street checks in Vancouver despite making up less than 1% of the population.³
- Between 2008 and 2013, Black people in Toronto were 3.25 times more likely to experience a street check than White people. The disproportionate targeting of Black people occurred across all Toronto neighbourhoods.⁴ In fact, disproportionate police stops of Black individuals was even more pronounced in low-crime, predominantly White neighbourhoods.⁵
- A 2019 survey of GTA residents found that, after controlling for relevant factors, "Black [people] are twice as likely to experience one or more police stops, three times more likely to experience two or more police stops, seven times more likely to experience three or more police stops, and nine times more likely to experience four or more police stops" than are White or Chinese people. The survey found that Black people are also 6.1 times more likely to experience a police search than their White counterparts.⁶
- Both the frequency of police stops in the Greater Toronto Area, as well as the racial disparities in GTA police stops, has increased over the past 25 years.⁷

Racial disparities in arrest rates:

- A 2020 study found that between 2013 and 2017 in Toronto:
 - o 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;
 - o 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;
 - o Despite being charged at a disproportionately higher rate (Black people in Ontario were 3.9 times more likely to be charged by police than White people), 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.⁸

Racial disparities in police use of force, serious injuries and deaths:

- Ontario’s Special Investigation Unit (SIU) is called to investigate policing incidents where a person was seriously injured or died. An analysis of SIU data from 2013 – 2017 showed that, while Black people made up 8.9% of Toronto’s population, they accounted for:
 - o 25.4% of SIU investigations;
 - o 28.8% of police use of force cases;
 - o 36% of police shootings;
 - o 61.5% of police use of force cases that resulted in civilian death; and
 - o 70% of police shootings that resulted in civilian death.⁹

Courts

Canadian courts do not systematically collect or report on racial identity, making it impossible to comprehensively study the interaction of race and court processes or outcomes. We do have a few indicators, however, that race impacts court outcomes:

- A 1994 study that followed over 1,800 cases from two Toronto bail courts found that over one-third (36%) of Black people accused of a crime were detained before trial; the percentage detained dropped to less than a quarter when looking at accused from other racial backgrounds. Other factors that might be relevant to whether someone was detained before their trial – flight risk, seriousness of the charges, or criminal record, for example – did not fully explain the differences between Black and White accused persons. Race remained a significant predictor of pretrial detention after controlling for other relevant factors.¹⁰
- A 2002 study again confirmed that 15.5% of Black accused in Ontario were held until their trial, compared to 7.3% of White accused. These differences were not explained by other possibly relevant factors.¹¹
- More recent data shows that Black accused in Ontario are detained longer before trial as compared to White accused.¹²

Jails and prisons

As a result of disproportionate policing, bias in our criminal justice system, and other forms of systemic discrimination in our society, Black Canadians are incarcerated at much higher rates than White Canadians. While overall sentenced incarceration rates have been on a long-term decline in Canada, this decrease in incarceration has not extended to Black Canadians. Again, some numbers:

- Black people make up 7.2% of the federal prison population in the Canada but are only 3.5% of the overall population, making them more than twice as likely to be incarcerated in federal prisons.¹³
- In Nova Scotia in 2010-2011, Black adults made up 2.1% of the population, but accounted for 14% of admissions to provincial custody.
- In Ontario, Black adults made up 3.9% of the population in 2010-2011 but accounted for 17.7% of admissions to custody in the province.
- In 2011-2012, Black youth accounted for almost one-quarter (24.1%) of admissions to custody in Ontario while comprising only 3% of the province's youth population at the time (Rankin & Winsa, 2013). Notably, the incarceration rates for young men have steadily declined since the introduction of the Youth Criminal Justice Act in 2003; however, Black male youth have not benefitted from this decline.
- Between 2003 and 2013 the proportion of federal prisoners who were Black rapidly increased, from 7.3% in 2003 to 9.3% in 2013. In 2018 7.3% of federal prisoners were Black.

Black prisoners in federal institutions report that institutional rules are applied differently to them, as compared to prisoners from other racial backgrounds. A 2013 report¹⁴ from the Office of the Correctional Investigator found data to support those assertions:

- Between 2007/08 and 2011/12, while the overall number of disciplinary charges against federal prisoners dropped by 7%, the number of Black prisoners facing disciplinary charges rose by 59%
- Black prisoners were consistently over-represented in charge categories that give correctional officers more discretion on whether to file disciplinary charges, and consistently under-represented in categories like possession of stolen property, theft and damage of property where officers have less discretion.

Victimization

Although there is limited data available, what we do know suggests that Black Canadians are disproportionately the victims of certain types of crimes.

Some specific numbers:

- Black Canadians are over-represented among the victims of hate crimes in Canada: in 2017, 43% of hate crimes reported to the police were motivated by race or ethnicity, and Black Canadians were the primary targets of racially motivated hate crimes.¹⁵
- Between 1992 and 2003, the rate of Black homicide victimization in Toronto (10.1 per 100,000) was four times greater than the city average (2.4 per 100,000).¹⁶

A note on the gaps in our knowledge

It is very difficult to access data about the Canadian criminal justice system that is disaggregated by race. Unlike other comparable countries like the United States and the United Kingdom, Canadian police, courts and correctional authorities do not typically release race-related data. Most of the above studies collected data via access to information requests – a slow, laborious and costly process that forces the government to disclose data – or independent investigations and inquiries that used legal powers to force the disclosure of government data. The debate over the collection and disclosure of race-based data in Canada is a long-standing one. Initially, groups representing racialized communities objected to the release of race-based data out of concern that the findings would entrench discriminatory practices. More recently, however, many racialized groups have called for collecting and releasing such data in order to clearly identify and track race-based disparities within our criminal justice system, including the impact of systemic discrimination and unconscious bias.¹⁷ A clear picture of the extent and nature of anti-Black racism in the Canadian criminal justice system will not be possible unless Canada adopts systematic race-based data collection and disclosure practices.

Resources for further reading and reflection

General resources on anti-Black racism and the criminal justice system

Many of the statistics presented here are drawn from Chapter 4 of Akwasi Owusu-Bempah and Shaun Gabbidon's recent book, *Race, Ethnicity, Crime, and Justice: An International Dilemma* (2020, New York: Routledge). This resource also includes information about Indigenous experiences with criminal justice in Canada.

Anthony Morgan, a racial justice educator and lawyer, has created a crowd-sourced Black Lives Matter Canadian Syllabus, with contributions flowing in through the BlackLivesCDNSyllabus hashtag on Twitter. You can also find all the resources – books, essays, docs and videos – at this google doc: <https://docs.google.com/document/d/1Bas9pfAPdY5dZtoJx20ORpa3YZa4A5H0L5P3OgzB-mo/mobilebasic?pref=2&pli=1>.

Professors Akwasi Owusu-Bempah, Camisha Sibblis and Carl James put together an accessible [Expert Report on Crime, Criminal Justice and the Experience of Black Canadians in Toronto, Ontario](#), which reviews a wide range of historical, social and societal facts that help to contextualize the over-representation of Black Canadians in the criminal justice system.

Policing

The Ontario Human Rights Commission has spent many years working on discrimination in policing in Ontario. You can find their most recent work on their website, www.ohrc.on.ca. Here are a few of the major reports and associated analyses they have published over the years:

- [Policy on eliminating racial profiling in law enforcement](#) – a resource, primarily meant for law enforcement authorities, on how to identify and prevent both individual and systemic racial profiling in law enforcement
- [A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service](#) (2020)
- [A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service](#) (2018)
- [Under suspicion: Research and consultation report on racial profiling in Ontario](#) (2017)
- [Response to the Race Data and Traffic Stops in Ottawa Report](#) (2016)

Racial disparities in police stops in Vancouver, Halifax, and Ottawa:

- Overrepresentation of Black people in street checks by the Vancouver Police Department: [Complaint from the Union of BC Indian Chiefs and the BC Civil Liberties Association](#) to the Office of the Police Complaint Commissioner.
- Scot Wortley, [Halifax NS: Street Checks Report](#) (Halifax, NS: Researched and Written for the Nova Scotia Human Rights Commission, 2019)
- Lorne Foster 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, report submitted to the Ottawa Police Services Board and Ottawa Police Service). See also the Ontario Human Rights Commission's response to this data [here](#).

There have been numerous media articles documenting the experiences of Black people in Canada, racial profiling in policing, and the overrepresentation of Black people in police stops, searches and documentation. Here are some examples:

- [“Known to police: Toronto police stop and document black and brown people far more than whites”](#) by Jim Rankin and Patty Winsa, *Toronto Star*.
- [“When good people are swept up with the bad”](#) by Jim Rankin, *Toronto Star*.
- [“Singled out”](#) by Jim Rankin, Jennifer Quinn, Michelle Shephard, Scott Simmie and John Duncanson, *Toronto Star*.
- [“Hamilton police disproportionately stop and question black people”](#) by Kelly Bennett, *CBC News*.
- [“The Skin I’m In: I’ve been interrogated by police more than 50 times – all because I’m black”](#) by Desmond Cole, *Toronto Life*.
- [“Toronto marijuana arrests reveal ‘startling’ racial divide”](#) by Jim Rankin and Sandro Contenta, *Toronto Star*.
- [“Black and Indigenous people are overrepresented in Canada’s weed arrests”](#) by Rachel Browne, *Vice*.

[Courts, prisons and jails](#)

[Exclusive: New data shows race disparities in Canada’s bail system](#) by Anna Mehler Paperny, *Reuters*.

[“Unequal justice: Aboriginal and black inmates disproportionately fill Ontario jails”](#) by Jim Rankin, Patty Winsa, and Hidy Ng, *Toronto Star*.

Various Canadian government sources outline statistics and experiences of Black inmates with the prison system:

- [A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries](#) by the Office of the Correctional Investigator.
- [The Impact of Mandatory Minimum Penalties on Indigenous, Black and Other Visible Minorities](#) by the Department of Justice.

¹ Many of the statistics presented here are drawn from Chapter 4 of Akwasi Owusu-Bempah and Shaun Gabbidon’s recent book, *Race, Ethnicity, Crime, and Justice: An International Dilemma* (2000, New York: Routledge).

² Scot Wortley, Halifax NS: [Street Checks Report](#) (Halifax, NS: Researched and Written for the Nova Scotia Human Rights Commission, 2019), available online: [Street Checks Report](#).

³ Union of British Columbia Indian Chiefs and British Columbia Civil Liberties Association to Office of the Police Complaint Commissioner, 14 June 2018, [Policy Complaint Concerning Street Checks](#) by the Vancouver Police Department.

⁴ Scot Wortley, Akwasi Owusu-Bempah and Huibin Lin, “Race and Criminal Injustice: An Examination of Public Perceptions of, and Experiences with, the Criminal Justice System among Residents of the Greater Toronto Area” (2020) Canadian Association of Black Lawyers (see Table 1).

⁵ Jim Rankin, “Carded: Probing a Racial Disparity”, *Toronto Star* (6 February 2010); Jim Rankin, [“When Good People Are Swept Up with the Bad”](#), *Toronto Star* (6 February 2010); Jim Rankin and Patty Winsa, [“Known to Police: Toronto Police Stop and Document Black and Brown People Far More Than Whites”](#), *Toronto Star* (9 March 2012).

⁶ Scot Wortley, Akwasi Owusu-Bempah and Huibin Lin, “Race and Criminal Injustice: An Examination of Public Perceptions of, and Experiences with, the Criminal Justice System among Residents of the Greater Toronto Area” (2020) Canadian Association of Black Lawyers.

⁷ Scot Wortley, Akwasi Owusu-Bempah and Huibin Lin, “Race and Criminal Injustice: An Examination of Public Perceptions of, and Experiences with, the Criminal Justice System among Residents of the Greater Toronto Area” (2020) Canadian Association of Black Lawyers.

⁸ Ontario Human Rights Commission, [“A Disparate Impact: Second Interim Report: Inquiry on Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service”](#) (Toronto, ON: Ontario Human Rights Commission, 2020).

⁹ 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”](#) (Toronto, ON: Ontario Human Rights Commission, 2018)

¹⁰ Gail Kellough and Scot Wortley, “Remand for plea. Bail decisions and plea bargaining as commensurate decisions” (2002) 42:1 *Brit J Crim* 186 at 195-196.

¹¹ Jim Rankin, Jennifer Quinn, Michelle Shephard, Scott Simmie, and John Duncanson, [“Singled out: An investigation into race and crime”](#) *Toronto Star* (19 October 2002); Jim Rankin, Jennifer Quinn, Michelle Shephard, Scott Simmie, and John Duncanson, “Police target black drivers” *Toronto Star* (20 October 2002).

¹² Anna Mehler-Paperny, [“Exclusive: New data shows race disparities in Canada’s bail system”](#) *Reuters* (19 October 2017).

¹³ Public Safety Canada, [Corrections and Conditional Release Statistical Overview 2019](#); Statistics Canada, [“Census Profile, 2016 Census.”](#) 8 February 2017.

¹⁴ Canada, Office of the Correctional Investigator, [A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries](#), 2013 at 22.

¹⁵ Amelia Armstrong, *Police-Reported Hate Crime in Canada, 2017* (Ottawa: Canadian Centre for Justice Statistics, 2019) at 11.

¹⁶ Gartner and Thompson, “Trends in Homicide in Toronto” in Bruch Kidd and Jim Phillips, eds, *From Enforcement to Prevention to Civic Engagement: Research on Community Safety* (Toronto: University of Toronto Centre of Criminology, 2004).

¹⁷ Akwasi Owusu-Bempah and Paul Millar, “Research note: Revisiting the collection of ‘justice statistics by race’ in Canada” (2010) 25:1 CJLS 97.