Abstract and Keywords

Canada effectively bans systematic collection and dissemination of racially disaggregated criminal justice statistics. A significant proportion of Canada's racial minority populations perceive bias in the criminal justice system, especially on the part of police. Aboriginal and black Canadians are grossly overrepresented in Canada's correctional institutions. Some evidence suggests that both Aboriginal and black populations are overrepresented with respect to violent offending and victimization. Social conditions in which Aboriginal and black Canadians live are at least partially to blame for their possibly elevated rates of violent offending. Evidence indicates that racial bias exists in the administration of Canadian criminal justice. At times, this discrimination has been supported by court decisions. Discrimination and disparity are at times acknowledged by government, but they are seldom wholeheartedly addressed. There is a lack of political will to address issues of racial minority overrepresentation in relation to manifestations of racial discrimination or to the societal conditions that lead to criminal offending.

Keywords: racism, crime, criminal justice, Aboriginal, multiculturalism

Connections among race, crime, and criminal justice are often portrayed in Canadian media images and are captured in the popular imagination. Yet, in comparison to the United States and Great Britain, these phenomena receive relatively little attention from Canadian academics and policy makers. A lack of readily available criminal justice data disaggregated by race makes it particularly difficult for researchers to examine the nature of these racial differences. Thus, we are unable to determine the extent to which higher rates of offending among certain racial groups and discrimination in the administration of criminal justice contribute to the apparent overrepresentation.

Unlike their American neighbors to the south, Canadians are uncomfortable discussing issues of race and racial difference, preferring instead to use the language of ethnicity and culture. Reluctance to discuss race is evident in the history of the Canadian census, which for decades utilized ethnic categorizations as a proxy for measuring race. The Canadian federal government has also coined the term "visible minority"[1] to refer to the country's nonwhite, non-Aboriginal populations. This moniker masks immense differences in those subsumed under the category and also serves to erase the effects of racial discrimination in Canadian public institutions. Similarly, Canada's de facto ban on the systematic collection and dissemination of racially disaggregated criminal justice statistics provides a convenient shield against allegations of racial bias for justice institutions and Canadian governments.

Nonetheless, available evidence indicates that a significant proportion of Canada's racial minority populations and a sizable proportion of the white population perceive bias in the criminal justice system. These public perceptions are supported by data that show that certain racial minority groups, particularly Aboriginal and black Canadians, are grossly overrepresented in Canada's correctional institutions. Further evidence indicates that racial bias does exist in the administration of Canadian criminal justice, and, at times, this discrimination has been supported by court decisions. We cannot discount, however, the probability that increased rates of offending among certain racialized groups contributes to their overrepresentation in correctional statistics. As we show in this essay, research suggests that Aboriginal and black Canadians are overrepresented with respect to violent offending and victimization. The Canadian federal government itself has pointed out that the social conditions in which Aboriginals live is at least partially to blame for their rates of violent offending (Department of Justice 2009). We have previously made the same connection with respect to black Canadians (Wortley and Owusu-Bempah2011a).

Unfortunately, there is an apparent lack of political will to address issues of racial minority overrepresentation in the Canadian criminal justice system. Ambivalence to address these issues relates both to the manifestations of racial discrimination in the system, as well as to the societal conditions that lead to criminal offending. Discrimination and disparity may be at times acknowledged, but they are seldom wholeheartedly addressed. When addressed, the means are seldom thoroughly evaluated for effectiveness, and, when evaluated, the results are rarely made public.

Issues of racial overrepresentation in the criminal justice system should be of particular concern to Canadians at present. Our conservative federal government has recently passed an omnibus crime bill that includes mandatory minimum sentences for certain drug crimes. As the American experience shows, this approach to crime reduction has had a disproportionate impact on African Americans and Latinos in that country. Canadian advocates are currently voicing their concern as to how the new pieces of legislation will affect Canada's racial minority groups.

The most important conclusions of this essay are summarized as follows:

- Aboriginal and black Canadians are significantly overrepresented in both federal and provincial correctional institutions. The extent to

which blacks and Aboriginals are overrepresented in Canadian correctional institutions is similar to that of African Americans in the United States. However, this profound racial overrepresentation has received far less academic, public, and policy attention.

• Although race-based crime data are not usually collected in Canada, there is some evidence to suggest that both Aboriginal and black populations are overrepresented with respect to violent offending and victimization.

• A large proportion of Canadian minority populations perceive that there is bias within the Canadian criminal justice system. These perceptions are more pronounced for the policing sector, but possible bias in the criminal courts is also a concern for Canadians.

• The limited research that has been conducted suggests that these perceptions of racial bias may, in fact, be justified. A number of studies have indeed determined that discrimination exists with respect to the operation of the Canadian police, criminal courts, and correctional institutions.

• The suppression of disaggregated racial data from Canadian criminal justice institutions hinders criminological research on race, crime, and criminal justice. It is thus difficult for Canadian academics to study racial disparity and discrimination within our system. This ban on data collection, however, serves to protect criminal justice agencies from allegations of racial bias.

• Evidence suggests that the Canadian government does not want to openly deal with issues of race, crime, and criminal justice. We contend that the Canadian government's reluctance to adequately address racial disparity and discrimination in crime and criminal justice fits well with the ideology of democratic racism—a system in which egalitarian values such as liberalism, justice, and fairness conflict but coexist with racialized beliefs and practices.

This essay presents an overview of research on race, crime, and criminal justice in Canada. Section I discusses the concept of race in Canada and contextualizes the racial classification schemes utilized in the country. Section II examines the ongoing debate over the collection and dissemination of racial data within the Canadian criminal justice system and provides an overview of currently available data. In Section III, data on the representation of racial minorities in Canadian correctional institutions are examined. The vicitimization and offending rates of racialized Canadians is also presented. Section IV examines racial bias in the Canadian criminal justice system, presenting data on citizen perceptions of criminal injustice, and documents research that has examined racial bias in the administration of justice. In Section V, the concept of democratic racism and its applicability to research in the field are discussed. An overview of important areas for future research and relevant policy suggestions are then outlined.

I. No Place for Race

Canada[2] is hailed as a diverse and tolerant nation that welcomes over 200,000 immigrants from across the globe each year. Recent immigration patterns can be credited with the emergence of one of the world's most heterogeneous populations. As Canadian Heritage, the federal ministry responsible for culture, language, and multiculturalism proudly states, Canada's "32 million inhabitants reflect a cultural, ethnic, and linguistic make-up found nowhere else on earth" (Canadian Heritage 2009). The latest figures from the 2006 Census put the "visible minority" population at slightly over 5 million people, or 16.2 percent of the overall population, having increased from 11.2 percent in 1996 and 4.7 percent in 1981. Data trends suggest that Canada's visible minority population is growing rapidly and will continue to do so. For example, between 2001 and 2006, Canada's visible minority population increased by 27.2 percent, a rate five times higher than the overall population growth rate of 5.4 percent (Chui, Tran, and Maheux 2008, p. 12). If immigration trends continue, Canada's visible minority population will continue to grow much more rapidly than the white population. Recent estimates project that Canada's "visible minority" groups could account for one-fifth of the Canadian population by 2017 and just under one-third by 2031 (Statistics Canada 2010, p. 23).

A number of measures have been put in place to promote diversity within Canada and protect the rights of its diverse peoples. The Canadian Charter of Rights and Freedoms, for example, guarantees individual's fundamental rights, such as freedom of religion and expression, and provides for equal treatment before and under the law. Section 27 of the Charter also requires that it be interpreted within a multicultural context. As state policy, multiculturalism has existed in Canada since 1971; it was entrenched in the Canadian Constitution in 1981, and the official Multiculturalism Act received royal assent in 1988. The intent of the Act was to facilitate the cultural development of ethnocultural groups and enable minorities to overcome barriers to full participation in Canadian society. The Act also sought to encourage creative interchanges among all ethnocultural groups and assist new Canadians in learning one of Canada's two official languages. Although Canadian multiculturalism has been tested in recent times, no politicians have come out to claim the state policy a failure, as have Prime Minister Cameron in Britain and President Sarkozy in France (BBC 2011; France24 2011).

Despite the racial heterogeneity that characterizes Canadian society, neither its government, nor its people are completely comfortable with the notion of race, preferring instead to use the language of ethnicity and culture (Thompson 2010, p. 33). By contrast, Canadian scholars have provided the following definition of race in the contemporary Canadian context:

> A socially constructed category used to classify humankind according to common ancestry and reliant on differentiation by such

> physical characteristics as color of skin, hair texture, stature, and facial characteristics. The concept of race has no basis in biological reality and as such, has no meaning independent of its social definitions. But, as a social construction, race significantly affects the lives of people of color. (Henry and Tator 2005, p. 351)

Ethnicity, on the other hand, refers to the characteristics of a human group that shares a common heritage, culture, language, religion, and perhaps race (Henry and Tator 2005, pp. 41, 350). Although the definition of race just provided accurately captures the phonotypical and morphological differences that are commonly associated with different racial groups, this definition somewhat overlooks the importance that race plays as a signifier in a complex set of power relations within a given society (Thompson 2010, p. 1). Race is not simply a social construct but also a political one (Thompson 2010, p. 3). Ascription to one racial group or another has an immense impact on an individual's life chances and determines his or her positioning within the racial power structure. As Thompson found in her historical examination of racial classifications in the Canadian census, the language of ethnicity, rather than race, is used by elites, policy makers, and academics to disguise the racial power relations that structure Canadian society (Thompson 2010, p. 1).[3]

Canada's official reluctance to accept or even discuss race and racial differences is evident in the history of its national census—a primary tool used to demarcate the population. Unlike the United States, which always included a question on race in its national census, Canada has a rather inconsistent history of enumerating the racial origins of its people (Thompson 2010, p. 168). Thompson's research shows that the language of race did exist in the earliest Canadian census, from the early 19th century up until the end of World War II. In 1951, the language of race, but not the actual question, was removed from the census. Thompson attributes this maneuver to the changing transnational climate in the postwar era and associated fear of the term "race" in light of the events that had recently taken place in Nazi Germany (D. Thompson 2011, personal communication, October 13, 2011). Instead, the following period saw the language of ethnicity being used as a proxy for racial origins. For example, the censuses of 1961 and 1971 "asked each person to report the ethnic or cultural group that he or his ancestor (on the male side) belonged to on coming to the North American continent" (Thompson 2010, p. 195). Instead of asking about race directly, people were asked where they or their forbears came from.

By the 1980s, however, concern about the participation of racial minorities in Canadian society, particularly in the employment sector, began to grow. A House of Commons Special Committee on the Participation of Visible Minorities in Canadian Society (1983) and the Royal Commission on Equality in Employment (Abella 1984) both called for official statistics on the "workforce profile" of racial minorities in order to determine the size of the pool of potential workers (Thompson 2010, pp. 202–3). The report of the Royal Commission that finally led to the implementation of the 1986 Employment Equity Act detailed the statistical data required to determine the situation of racial minorities, Aboriginals, women, and persons with disabilities in the working environment (Thompson2010). The most appropriate way to gather this information was deemed to be through the census, but reluctance to include a direct race question remained because it was still viewed as "too controversial" (Thompson 2011, personal correspondence). Thus, proxies or indirect measures continued to be used until a direct question was finally reintroduced in the 1996 census. Reluctance to include the question is well captured in a quote from a civil servant taken from an interview conducted in the course of Thompson's doctoral research: "[T]he upper echelons of Statistics Canada never wanted to have a question on race, and when the deed was finally cemented in 1995, they went kicking and screaming the entire way" (Thompson 2010, pp. 210–11).

As noted, the original intent of the Employment Equity Act was a positive one—to remove barriers to equality in the workplace. However, the Act wrote into law, and thus socially constructed, the problematic demographic category "visible minority." The Employment Equity Act defines visible minorities as "persons, other than aboriginal peoples, who are non-Caucasian in race or nonwhite in colour" (Department of Justice 2005). According to the Canadian government's operational definition, the following groups are classified as visible minorities: blacks, Asians (i.e., Chinese, Japanese, Koreans, Vietnamese, etc.), South Asians (i.e., people of Indian and Pakistani descent), West Asians (i.e., people of Middle Eastern descent), Latin Americans, and Pacific Islanders. Thus, Canada officially has three distinct racial groups: whites, Aboriginals, and visible minorities.

One criticism of the "visible minority" designation is that the category constructs whiteness as the national norm. The term "visible minority" recently came under fire by the United Nations Committee on the Elimination of Racial Discrimination, which branded the term "racist." According to the committee, the highlighting of a certain group is inconsistent with Article One of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Canada is a signatory (Canwest March 8, 2007). Article One of the Convention states that racial discrimination occurs when equitable treatment is upset by any "distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin" (Canwest March 8, 2007). A similar critique has been made of Canadian multiculturalism more generally. It has been argued that the multiculturalism policy promotes the idea of a dominant Canadian culture based on the values of the original British settlers and their descendents, to which all other groups are multicultural in relation (Henry 2002). Although the "visible minority" designation was developed to help foster equality for racial minorities in employment, an argument can be made that it is white Canadians who benefit from the category. If Canada is to be truly multicultural, all racial groups must be recognized and accounted for.

A further criticism of the visible minority category is that it masks the immense differences of the individuals and groups subsumed under

this broad category; for example, differences in terms of race, as well as ethnicity, religion, country of origin, immigration status, and language. The term "visible minority" serves to mask employment-related inequalities. For example, data show that black Canadians have a higher rate of unemployment than do whites. By contrast, Asian Canadians have a lower unemployment rate. Combining these two groups, we find that "visible minorities" have a similar rate of unemployment—thus eliminating evidence of racial inequality. The inherent problems posed by the heterogeneity of those categorized as visible minorities calls into question the utility of the category as a means of redressing discrimination, as has been noted in research into the earnings of visible minorities (Hum and Simpson 2000), their levels of residential segregation (Bauder 2001), and their educational outcomes (James 2012). We argue that, in fact, the category may not only lack utility, but may actually be counterproductive, at least for the most marginalized groups whose circumstances can never be fully recognized by using such a broad categorization. Furthermore, as will be evidenced in the next section, we believe that certain segments of the population may not see it in their own interest to collect, analyze, or publish adequate data on racial minorities in a variety of sectors because of what the data might uncover and due to the potential ramifications of their release (requiring redress and ultimately government action). What follows is an examination of the collection of race-based statistics within the Canadian criminal justice system.

II. Race-Based Data in the Canadian Criminal Justice System

In this section, we examine the lack of race-based criminal justice data available in the Canadian context. We first provide an overview of the long-running debate over the collection and public release of race-relevant criminal justice statistics, including the arguments for and against the practice. This section also looks at current practices with regards to the collection and dissemination of race-based statistics within the policing, court, and correctional sectors.

A. Background

Canada's reluctance to acknowledge and document race is most evident in the operation of its criminal justice system and in its criminal justice policies. Unlike in the United States and the United Kingdom, where race-based criminal justice statistics are readily available to the public and researchers alike, the Canadian criminal justice system does not systematically collect or publish statistics on the race of individuals processed through the system. The debate over the collection of racial data from the criminal justice sector in Canada can be traced back as far as 1929 (Roberts 1992). Discussions about the collection, or more accurately, the public release of these data have emerged more recently in the context of broader debates about race, crime, and the administration of criminal justice—particularly related to the circumstances of Aboriginal and black Canadians (Hatt 1994; Johnston 1994; Gabor 1994; Roberts 1994; Wortley 1999; Owusu-Bempah and Millar 2010). On the one hand, allegations of racial discrimination have been leveled against the justice system to explain the overrepresentation of certain racial minority groups in the few available sources of police and correctional data. On the other hand, it has been suggested that racial minorities are disproportionately involved in criminal activity, which accounts for their disproportionate involvement with the criminal justice system as reflected in the data. Unfortunately, our ability to test either of these claims is limited by the absence of available data, despite numerous calls for its collection. Several major attempts have been made in Canada to collect racial and ethnic data, particularly in the policing sector (Fine 1990; Wortley and Marshall 2005; Leclair InfoCom 2009); these attempts, however, have not paved the way for systematic data collection.

Although the level of public, political, and academic attention paid to the debate has varied over the past two decades, several key issues have remained central to the debate since it arose again most recently in the early 1990s. There has, however, been one major shift. Whereas racial minority groups were initially opposed to the collection of race-based criminal justice statistics for fear that these data could be used to justify discriminatory policies, many minority groups now advocate for the collection and publication of these data as a means to redress racial discrimination in the administration of criminal justice (Owusu-Bempah and Millar 2010). It is now primarily Canadian police agencies that are openly expressing their opposition to the collection, analysis, and dissemination of race-based statistics, with many officially or unofficially refusing to send data to national reporting agencies (Millar and Owusu-Bempah 2011). Supporters of race-based data collection argue that political sensitivity should not suppress the collection of race-relevant criminal justice statistics and that such statistics are necessary in order to (1) monitor the processing of racial minorities through the criminal justice system; (2) provide useful information that is necessary for the development of criminal justice and social policy; (3) determine, objectively, if there is a relationship between race and crime; (4) provide transparency within the criminal justice system; and (5) identify bias in the administration of criminal justice. Detractors, on the other hand, argue that collecting and disseminating such data are problematic because (1) there are questions about the accuracy of criminal justice data (particularly police statistics); (2) the data could be socially disruptive and contradict the principle of equality under the law; (3) the data could be used to support biological theories of crime; and (4) the data could be detrimental to the system and could ultimately jeopardize public safety (if, for example, depolicing were to occur) (Wortley 1999; Owusu-Bempah and Millar 2010).

Methodological issues inherent in attempting to document racial data, as well as legal and privacy issues related to the reporting of these data to national agencies, are also perceived as obstacles to the implementation of systematic data collection. In terms of methodological

issues, it has been argued that great difficulties are associated with assigning people to specific racial categories and that these difficulties may impede the collection of racial data (Roberts 1994, p. 179). This issue has garnered a great deal of attention from academics and has been a concern in relation to Aboriginal identity data collection in the policing sector. A further obstacle to the collection of race-based criminal justice data is a concern held among some police agencies that the collection of these data and subsequent reporting of them to the national statistical agencies would violate federal, provincial, or territorial privacy legislation. In 2003, legal opinions were commissioned to determine whether the collection and reporting of racial or Aboriginal data did, in fact, violate privacy laws. Based on the consultations, the Canadian Department of Justice has confirmed that it would not. Although legal authority to collect Aboriginal identity data has been confirmed, some police agencies, such as the Royal Canadian Mounted Police (RCMP), maintain their position and refuse to collect or report such information (Owusu-Bempah 2011). Finally, we believe that criminal justice agencies may attempt to avoid allegations or studies of racial bias by refusing to collect race-based data (or, more accurately, release it to the public).

B. Current Practices

Notwithstanding the current debate, and despite the fact that very little race-relevant criminal justice data is made publicly available in Canada, information on alleged offenders and victims processed by the criminal justice system, including descriptions of Aboriginal status and racial background, is routinely collected in the records of criminal justice agencies. Police services, for example, have the ability to collect Aboriginal and/or racial data and many are, in fact, currently recording such data for intelligence purposes or when it is relevant to a criminal investigation (in Montreal, Toronto, and Ottawa, for example). The internal data management systems utilized by police services collect detailed information on the racial background of accused persons and victims involved in crime incidents. Although some police forces currently report Aboriginal information to Statistics Canada, the majority refuse to do so (e.g., Montreal, Toronto, and Ottawa). In 2009, 20 percent of Canadian police forces had an official policy not to submit Aboriginal information in the Uniform Crime Reports (UCR) sent to Statistics Canada, and almost 60 percent were not doing so as a matter of practice. The suppression of racial data by Canadian police services is so widespread that racial information was missing for 80 percent of the UCR cases submitted to Statistics Canada in 2009, even though a race field exists on the forms (Millar and Owusu-Bempah2011, p. 658).

The Integrated Criminal Court Survey[4] and the Integrated Correctional Services Survey are also valuable sources of information on individuals processed through later stages of the criminal justice system. Aboriginal identity data are collected in the Integrated Criminal Court Survey, but racial information beyond Aboriginal designation is not; these data could be included in the survey if they were deemed important by stakeholders. The Integrated Correctional Services Survey[5] currently collects self-reported racial information for individuals entering the correctional system. This information is used internally to inform program and policy needs. The most readily available criminal justice data that includes information on race is the Corrections and Conditional Release Statistical Overview, produced on an annual basis and released to the general public by Public Safety Canada. This document includes a "one-day snapshot" detailing the race of all offenders under federal supervision (Public Safety Canada 2009). This "snapshot" is limited, however, in that it does not provide any information about regional differences in the racial composition of the offender population (this must be obtained through special request), nor does it highlight racial differences in sentence length or other issues. The vast majority of data on the racial background of individuals processed through the Canadian criminal justice system is used for internal purposes and is not made publicly available in any systematic way. Furthermore, because this information is collected to meet the disparate operational needs of the agencies involved, the data often lack the consistency necessary for comparative purposes.

In sum, race-based data in Canada are collected by a variety of criminal justice institutions, yet national reporting of racial and Aboriginal data is sparse and inconsistent, especially when looking beyond the Aboriginal category. No data are systematically available for any stage of the prosecution process despite the introduction of an Aboriginal variable into the Integrated Criminal Court Survey. The correctional sector systematically collects racial and Aboriginal identity information upon prisoner intake; however, very little is made available to the general public. Access to Information legislation may be utilized in an attempt to gain access to racial data, but pursuing this avenue by no means guarantees that access will be granted. In the next section, we review available data on racial minority representation in correctional, offending, and victimization data.

III. Racial Minority Representation in Correctional, Victimization, and Offending Data

In this section, we present research that examines the representation of racial minorities in Canadian provincial and federal correctional institutions. This section of the essay also presents data on the representation of racialized Canadians as victims of crime and as offenders.

A. Minority Overrepresentation in the Canadian Correctional System

Canada has a two-tiered correctional system. The federal system houses all offenders who have been given a sentence of 2 years or

longer. The provincial system, by contrast, houses all offenders serving a sentence of less than 2 years, as well as those remanded to custody while awaiting trial. As discussed earlier, the federal correctional system is the only segment of the Canadian criminal justice system that regularly collects data on the racial background of offenders. These statistics are published annually in the Corrections and Conditional Release Statistical Overview (Public Safety Canada 2012).

Table 1. The Representation of Ethnoracial Groups in Canada's Federal Corrections System (2011)

RacialBackground	NationalPopulation[1]	Percent of NationalPopulation	FederalCorrectionalPopulation[2]	Percent FederalCorrectionalPopulation	OddsF
White	25,000,155	80.0	14,646	64.1	0.80
Aboriginal	1,172,785	3.8	4,236	18.5	4.87
Black	783,795	2.5	1,925	8.4	3.36
Asian[3]	2,090,390	6.7	678	3.0	0.45
South Asian[4]	1,262,865	4.0	226	1.0	0.25
Hispanic	304,245	1.0	234	1.0	1.00
West Asian[5]	422,245	1.3	268	1.2	0.92
Other	204,550	0.7	650	2.8	4.00
TOTAL	31,241,030	100.0	22,863	100.0	1.00

[1] Population estimates for each racial group were derived from the 2006 Census (Chui and Maheux 2008).

[2] The 2011 federal correctional statistics provided in this table include inmates within federal prisons and those under federal community s

[3] The "Asian" category includes people of Chinese, Japanese, South-East Asian, Korean, or Filipino descent.

[4] The "South Asian" category includes people of Indian, Pakistani, Sri Lankan, or Tamil descent.

[5] The "West Asian" Category includes people of Arab or other Middle-Eastern descent.

[5] The "Other" category includes people who report multiple racial backgrounds.

In Table 1, we use 2011 federal correctional statistics and data from the 2006 Canadian Census to explore the over- and underrepresentation of specific ethnoracial groups within Canadian corrections. The data indicate that Aboriginals, African Canadians, and people from multiracial backgrounds are all significantly overrepresented in the federal corrections system. For example, although Aboriginals represent only 3.8 percent of the Canadian population, they constitute almost one-fifth (18.5 percent) of offenders under federal supervision. Similarly, blacks represent only 2.5 percent of the Canadian population, but almost one-tenth of all federally supervised offenders. Hispanic and West Asian representation in corrections, by contrast, is approximately equal to their representation in the Canadian population. Importantly, whites and the members of all other racial minority groups are significantly underrepresented in the federal corrections system. Overall, people of South Asian descent have the lowest rate of federal correctional supervision in Canada (18 per 100,000), followed by Asians (32 per 100,000), and whites (59 per 100,000). By contrast, Aboriginals have the highest rate of federal correctional supervision (361 per 100,000), followed by African Canadians (246 per 100,000), and people with multiracial backgrounds (318 per 100,000).

Interestingly, although a great deal of academic discussion has addressed the gross overrepresentation of blacks in the American correctional system, our data suggest that Aboriginal Canadians are just as overrepresented within the Canadian system and that African Canadians are almost as overrepresented. Indeed, in 2010, the black rate of incarceration in the United States (3,074 per 100,000) was 6.7 times greater than the white rate (459 per 100,000) (see Guerino, Harrison, Sabol 2011). By comparison, within Canada's federal corrections system, the rate of Aboriginal correctional supervision is 6.2 times higher than the white rate, whereas the black rate is four times higher. Nonetheless, we cannot dismiss the reality that the incarceration rate for all racial groups is much higher in the United States than in Canada. Indeed, the white rate of incarceration in the United States (459 per 100,000) is almost twice the rate of blacks residing in Canada (245.6 per 100,000).

Further analysis reveals that the representation of Aboriginals and blacks is particularly high within federal correctional institutions. For

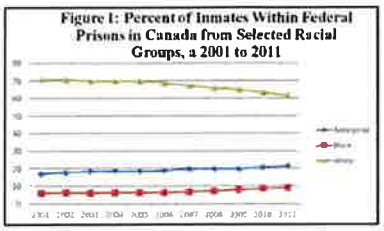

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Figure 1 . Percent of Inmates within Federal Prisons in Canada from Selected Racial Groups, 2001–2011.

Source: Zinger 2011

example, in 2011, Aboriginals represented 21.5 percent of all offenders housed in federal prisons but only 13.6 percent of those under federal community supervision (parole). Similarly, blacks represented 9.1 percent of the federal prison population but only 7.2 percent of those under federal community supervision. The data also suggest that both Aboriginal and black representation within federal prisons increased significantly between 2001 and 2011. By contrast, the representation of white inmates within federal prisons dropped from 71 percent to 61 percent during this period (see Figure 1). In other words, over the past decade, racial disparities within Canada's federal corrections system have become more pronounced (see Zinger 2011).

Unlike the federal system, provincial and territorial correctional systems do not normally release statistics on the racial composition of their correctional populations. However, it is common knowledge that such data are often collected for "programming purposes." With this in mind, we decided to make a series of freedom of information requests to the Ministries of Corrections for each Canadian province and territory. In each case, we explicitly requested any data that had been collected on the race or ethnicity of the provincial correctional population. Responses varied dramatically from province to province, territory to territory. Four provinces—Nova Scotia, New Brunswick, Ontario, and Alberta—were able to provide us with a detailed racial breakdown of their 2010–11 correctional population. Seven other provinces/territories—Newfoundland, Quebec, Manitoba, Saskatchewan, the Yukon, the North-West Territories, and Nunavut—were only able to give us details about the Aboriginal population within their correctional system.[6] Each of these jurisdictions indicated that it did not collect information on any other ethnoracial group. Two provinces failed to provide us with racial data. Prince Edward Island claimed that it does not collect any racial data whatsoever on its correctional population. British Columbia, on the other hand, confirmed that it does collect race-based data. However, it refused to release these data to our research team.

Based on the limited data that we did receive from the provinces and territories, one thing is perfectly clear: both Aboriginals and African Canadians are significantly overrepresented within provincial as well as federal corrections. Whites and other racial minority groups, by contrast, are all underrepresented. Table 2 illustrates this fact by providing the proportion of the population from each province or territory that is Aboriginal and black and the proportion of provincial/territorial correctional admissions from these two racial groups. It should be noted that these provincial admissions numbers (flow) provide a somewhat different measure of the correctional population than the federal correctional (stock) data discussed earlier. They are not necessarily comparable. Provincial prison numbers, for example, include offenders who have been denied bail, as well as those serving time for minor offenses (i.e., the nonpayment of fines, public intoxication, etc.). It is for these types of offensses that Aboriginals may be particularly overrepresented.

Table 2. Aboriginal and Black Overrepresentation within Provincial Correctional Institutions in Canada, 2010–2011, by Province/Territory

PROVINCE	ABORIGINALS		BLACKS	
PercentProvincialPopulation	Percent Admissions toProvincial CorrectionalInstitutions		Percent ProvincialPopulation	Percent Admissions toProvincial Correctional Institutions
Newfoundland	4.7		14.7	NA	NA
Nova Scotia	2.6		8.4	2.1	14.0
New Brunswick	2.4		8.8	0.6	2.4
Prince Edward Island	NA*		NA	NA	NA
Quebec	1.6		4.4	NA	NA
Ontario	2.0		11.8	3.9	17.7
Manitoba	15.5		69.0	NA	NA
Saskatchewan	14.8		63.0	NA	NA
Alberta	5.7		38.6	1.4	5.0
British Columbia	NA		NA	NA	NA
Yukon	25.1		75.7	NA	NA
North-West Territories	50.3		89.4	NA	NA
Nunavut	84.9		98.7	NA	NA

Source for population data: Chui and Maheux 2008

In Manitoba, Aboriginals represent only 15.5 percent of the population, but 69 percent of admissions to provincial correctional facilities. Similarly, in Saskatchewan, Aboriginals represent only 14.8 percent of the population, but constituted 63 percent of all admissions to provincial prisons. This racial disparity also exists for blacks—at least for those provinces providing data on black inmates. For example, blacks are only 3.9 percent of Ontario's population, but constituted 17.7 percent of admissions to Ontario's correctional facilities in 2010–11. Similarly, blacks represent only 2.1 percent of Nova Scotia's population, but 14.0 percent of all provincial prison admissions.

In sum, the Canadian data suggest that both Aboriginals and African Canadians are significantly overrepresented within the justice system. What is the cause of this overrepresentation? Some argue that this is the result of higher rates of criminal offending among Aboriginal and black populations. Others argue that this overrepresentation is the result of racial biases within Canadian policing, criminal courts, and corrections. We suspect both explanations may have some validity. We address these issues in the following sections.

B. Minority Victimization and Offending in Canada

Due to the de facto ban on the release of race–crime statistics, it is extremely difficult to fully document minority offending and victimization in Canada. However, consistent with the correctional statistics just presented, the data that are available indicate that Aboriginal and black Canadians have relatively high rates of criminal involvement. For example, statistics from several major Canadian cities—including Toronto and Montreal—reveal that serious violence is becoming increasingly concentrated within the black community. For example, Gartner and Thompson (2004) document that, between 1992 and 2003, the homicide victimization rate for Toronto's black community (10.1 murders per 100,000) was more than four times greater than the city average (2.4 murders per 100,000). Further investigation reveals that young black males are particularly vulnerable to violent death. For example, whereas black males comprise only 4 percent of Toronto's population, in 2007, they represented almost 40 percent of the city's homicide victims. This represents a homicide victimization rate for black males of approximately 28.2 per 100,000, compared to only 2.4 per 100,000 for the Toronto population as a whole (Wortley 2008). At the national level, crime data that have been released from the federal government suggest that Aboriginals typically have an annual homicide victimization rate that is seven to eight times higher than non-Aboriginals (Brzozowski, Taylor-Butts, and Johnson 2006).

Canadian surveys have produced mixed results with respect to minority victimization. The 2004 General Social Survey (GSS), for example, contacted a random sample of more than 24,000 Canadians and found that visible minorities had the same rate of violent and property victimization as whites (see Perreault 2008). However, this finding likely reflects the fact that the category "visible minority" combines racial groups with high victimization rates (i.e., blacks) with groups that have comparatively low victimization rates (i.e., Asians, South Asians, etc.).

Indeed, research using disaggregated racial categories suggests that black and Aboriginal Canadians are far more exposed to violent victimization experiences than are people from other racial backgrounds. For example, the 2000 Toronto Youth Crime and Victimization Survey, a study of more than 3,300 Toronto high school students, found that black students were significantly more likely to report multiple violent victimization experiences, including serious physical assaults, death threats, weapons-related threats, assault with a weapon, and sexual assault. For example, 13 percent of black female students reported that they had been sexually assaulted on three or more occasions in their life, compared to 6 percent of white female students, 4 percent of Asian female students, and only 1 percent of South Asian female students (see Tanner and Wortley 2002). Similar surveys have found that Aboriginal Canadians are more likely than other racial groups to experience various types of interpersonal victimization—including domestic violence (Department of Justice 2009).

Finally, Canadian data suggest that black Canadians are particularly vulnerable to hate crime victimization. Hate crimes are those criminal acts in which the perpetrator targets a victim because of his or her perceived membership in a certain social group, often defined by race/ethnicity, religion, or sexual orientation. These types of crimes are more likely to involve extreme violence and cause greater psychological trauma than crimes in which hate is not a motivating factor (Siegel and McCormick 2010). Data sources indicate that blacks are the most common target of hate crime in Canada. Starting in 2008, for example, the Canadian Centre for Justice Statistics (CCJS) released a series of reports on hate crime that included both police statistics and information from the 2004 GSS. Racial animosity is the most common motivation for hate crime. Indeed, race was the motivating factor in more than 60 percent of all documented hate crimes reported in Canada between 2004 and 2007. Furthermore, police statistics reveal that 48 percent of the race-related hate crimes reported to the police during this period involved black victims. By contrast, only 13 percent of race-based hate crimes involved South Asians, 12 percent involved West Asians (people of Arab descent), 3 percent involved Aboriginal peoples, and 2 percent involved people of East Asian background (people of Chinese, Japanese, Vietnamese, or Korean descent). In other words, although they represent only 2.5 percent of the total Canadian population, blacks represented half of those victimized by race-related hate crime during the study period (Dauvergne, Scrim, and Brenna 2008; Walsh and Dauvergne 2009).

As with criminal victimization, some Canadian data suggest that Aboriginals and African Canadians may also be more involved in some types of crime than are members of other racial groups. We might infer, for example, that blacks and Aboriginals are significantly overrepresented among homicide offenders—at least in some jurisdictions. As discussed earlier, black and Aboriginal homicide victimization rates are significantly higher than the national average. Since the vast majority of all homicides are intraracial (i.e., victims and offenders come from the same racial background), many observers have begun to refer to this phenomenon as "black-on-black" or "Aboriginal-on-Aboriginal" violence (Ezeonu 2008).

Many have argued that relatively high rates of homicide and gun crime among African Canadians and Aboriginals in Canada are reflective of their overrepresentation in street gangs. Unfortunately, official police statistics on Canadian gangs are almost nonexistent. However, in 2003, the Solicitor General conducted the first ever Canadian Police Survey on Youth Gangs (Chettleburgh 2007). More than 264 police agencies from across the nation participated in this study, and among them they identified 484 different youth gangs operating within Canada and an estimated 6,760 individual gang members. Interestingly, the majority of police agencies participating in the survey maintained that racial minority youth are grossly overrepresented in gang activity: Asian and South Asian gangs are thought to dominate the West Coast, Aboriginal gangs dominate the Prairie Provinces, and black gangs dominate Central and Eastern Canada (Chettleburgh 2007, pp. 18–20). The Toronto Youth Crime Victimization Survey (see Wortley and Tanner 2006) also found that self-reported gang membership was twice as high among black (13 percent) and Hispanic youth (12 percent) than among white (6 percent) and Asian (5 percent) youth.

Table 3. Percent of Toronto High School Students Who Report that They Have Engaged in Selected Deviant Activities at Some Point in Their Life, by Racial Group (Results from the 2000 Toronto Youth Crime Victimization Survey; Tanner and Wortley [2002])

	White	Black	SouthAsian	Asian	WestAsian	Hispanic
Carried a weapon in public	24.7	27.3	13.0	23.3	18.5	27.4
Engaged in robbery or extortion	12.7	17.8	8.6	10.4	7.7	11.0
Tried to seriously hurt someone	19.6	28.1	12.3	19.4	20.6	18.6
Got in a fight	63.9	73.1	50.2	54.7	64.9	59.9
Got in a group or gang fight	30.4	42.5	27.0	28.2	29.0	36.3
Forced someone to have sex	1.1	3.6	0.7	1.0	2.3	2.1
Used marijuana	44.9	38.7	10.9	19.2	20.9	36.5
Used cocaine or crack	5.9	2.3	0.7	2.5	2.3	3.4
Used other illegal drugs	12.5	3.4	0.7	7.1	4.7	7.4
Sold illegal drugs	16.8	14.6	4.1	9.2	8.2	16.9
Stole a motor vehicle	5.4	6.7	2.2	3.8	2.2	8.1
Stole a bike	12.0	18.8	7.1	9.3	8.2	20.3
Engaged in minor theft (less than $50)	50.1	50.3	33.3	48.7	35.1	50.7
Engaged in major theft (more than $50)	16.8	26.2	9.2	16.1	10.4	21.6
Been the member of a criminal gang	6.8	12.6	5.2	5.8	4.4	12.1

Consistent with American findings, survey results from Toronto also indicate that black Canadian youth may be somewhat more involved in some forms of violent behavior than are the members of other racial groups (see Table 3). For example, according to the results of the 2000 Toronto Youth Crime Victimization Survey (TYCVS), 53 percent of black students indicated that they had been involved in three or more fights in their lifetime, compared to 39 percent of white students, 32 percent of Asians, and 28 percent of South Asians. Similarly, 43 percent of black students reported that they had been involved in a "gang fight" (in which one group of friends battled another group) at some point in their life, compared to 30 percent of white students, 28 percent of Asians, and 27 percent of South Asians. It is important to note, however, that white students appear to be much more involved with illegal drugs than their black counterparts. For example, 45 percent of white students report that they have used marijuana at some time in their life (compared to 39 percent of black students), 6 percent have used cocaine or crack (compared to only 2 percent of black students), and 13 percent have used other illegal drugs (compared to only 3 percent of black students). Furthermore, 17 percent of white students report that they have sold illegal drugs at some time in their life, compared to only 15 percent of black students. This last finding is particularly noteworthy in light of other research that suggests that blacks are dramatically overrepresented with respect to drug possession and drug trafficking arrests and convictions. This discrepancy, therefore, could reflect possible racial bias in the investigation and prosecution of drug crimes in the Canadian context. This issue will be discussed in more detail in the next section.

In sum, it must be stressed that although some research indicates that blacks and Aboriginals in Canada may be more involved in some types of crime than are those from other racial backgrounds, the same studies also indicate that the vast majority of people from all racial groups never engage in serious criminal activity. It is also unfortunate that the ban on race–crime statistics in Canada precludes a more detailed analysis of the relationship between race and other forms of criminality. For example, although blacks and Aboriginals may be somewhat overrepresented in certain street-level crimes, it is quite possible that they are grossly underrepresented with respect to white-collar and corporate crime. Finally, it must be stressed that any overrepresentation of blacks and Aboriginals in street-level crime and violence can be explained by their historical oppression and current social and economic disadvantage. For example, Wortley and Tanner (2008) found that the impact of race on gang membership and criminal offending is greatly reduced after statistically controlling for

household income, single-parent background, and community-level poverty/social disorganization. Furthermore, the impact of black racial background on criminal offending becomes statistically insignificant after introducing variables that measure respondent perceptions of racial discrimination and feelings of social alienation. In other words, respondents who experience and perceive racism against their own racial group—with respect to housing, education, and employment opportunities—are more likely to be involved in crime than are those who do not experience or perceive racism. Group differences in exposure to racism and disadvantage, therefore, may explain why black and Aboriginal Canadians appear to be more involved in gangs and violent offending than are people from other racial groups. A possible source of racism against minority communities lies within the criminal justice system, and we turn to an examination of this issue in the following sections.

IV. Racial Bias in the Canadian Criminal Justice System

In this section, we present available data on the nature and extent of racial bias in the administration of criminal justice in Canada. We first look at citizen perceptions of bias in the criminal justice system. Second, we look at evidence of bias in policing, specifically, racial profiling, police use of force, and the arrest situation. We also examine evidence of racial bias in pretrial decision making, in sentencing, and within Canadian correctional institutions.

A. Citizen Perceptions of Criminal Injustice

Without adequate criminal justice data disaggregated by race, it is difficult to determine the extent to which bias exists within the Canadian criminal justice system. Nevertheless, available research suggests that a significant proportion of the Canadian population believes the system is biased against certain racial minority groups. Furthermore, research also indicates that racialized Canadians are less likely to have confidence and trust in the system and in the police in particular.

How the public perceives the criminal justice system is an important social issue. Citizen perceptions and attitudes can be used to evaluate the performance of the police, courts, and correctional system and help to determine whether these institutions provide equitable service to the public. Moreover, a growing body of research suggests that perceived legitimacy of the system is a predictor of criminal behavior; those who perceive the system as fair are less likely to engage in lawbreaking behavior than are those who do not (see Tyler 1990; Wortley and Tanner 2008). The perceptions of racial minorities toward the criminal justice system may be of particular concern; there exists a long history of strained tensions between certain minority groups and the police in many Western nations. These poor relations have been credited, at least in part, with sparking large-scale civil unrest, including riots in France, Australia, Great Britain, and the United States (see Bowling and Phillips 2002; Collins 2007). Although criminal justice representatives from Western nations have become increasingly concerned with fostering strong relationships with racial minority communities, relatively little research has documented these communities' attitudes and perceptions toward the system; this is particularly true for Canada. Here, we review empirical research from Canada documenting racial minority perceptions of the criminal justice system.

Henry (1994) conducted participant observation and in-depth interviews to collect anecdotal and quantitative data on the experiences of black Caribbean immigrants in Toronto. Using a class-based analysis, Henry found that a central concern of the Caribbean community in Toronto was its relationship with the police (Henry 1994, p. 201). Working-class respondents, particularly males, were most concerned about police harassment and police racism. This was less of a concern for working-class women. The respondents from the under-class or "street" category were also concerned about the issue of police–black community relations, but more specifically about how to avoid the police in the course of the illegal activities they engaged in (p. 202). Among the "street" and working classes were feelings of fear, hatred, and hostility toward the police (p. 208). The middle-class male respondents of the group agreed with the general concerns of the Caribbean immigrants and were also disturbed by their own experiences with police harassment. Student respondents, both high school and university, provided useful insight into attitudes toward the police. Regardless of class, students overwhelmingly viewed the police as the "ultimate oppressor" (p. 202). Those respondents who had experience with the court system commented on the lack of black representation, on both the bar and the bench. Their responses showed a stark difference between a white legal establishment and black defendants (p. 233). In line with these findings, further research suggests that a high proportion of black youth perceive the criminal justice system to be biased. A 1995 survey of 1,870 Toronto high school students found that more than half of the black respondents believed that the police treated members of their racial group "much worse" than they do members of other racial groups. By contrast, only 22 percent of South Asians, 15 percent of Asians, and 4 percent of whites felt that they were subject to discriminatory treatment at the hands of the police (Ruck and Wortley 2002).

Chu and Song (2008) examined attitudes toward the police among a nonrandom sample of 293 Chinese immigrants drawn from various community service organizations in Toronto. In general, the findings indicate that Chinese immigrants have relatively positive attitudes toward the police. Respondents who had previous contact with the police, however, rated the police less favorably than did those who had not. Respondents who did not speak English also expressed more negative views about the police, believing that more bilingual police officers were necessary. Although insightful, the research by Henry (1994) and Chu and Song (2008) has several limitations. First,

their small, nonrandom samples make it difficult to generalize the findings to the broader Caribbean and Chinese communities. Furthermore, because they focus on Caribbean and Chinese immigrants in isolation, it is impossible to determine whether the attitudes of groups of immigrants are significantly different than the attitudes of other Canadian residents.

Based on data from the 2004 Canadian GSS—Cycle 18 Victimization, Cao (2011) examined visible minority citizens' levels of confidence in the police, using a variety of measures. Consistent with his hypothesis, multivariate analyses indicate that visible minorities had lower levels of confidence in the police, even after controlling for relevant factors such as community context and crime-related variables. Respondents were asked whether they felt their local police force does a "good," "average," or "poor" job of enforcing the laws, promptly responding to calls, being approachable and easy to talk to, supplying information to reduce crime, ensuring the safety of the citizens, and treating people fairly. On all but one of the measures (promptly responding to calls), visible minorities were less likely than nonvisible minorities[7] to report the police were doing a "good" job; visible minorities were more likely to rate police performance as "poor" on each of the items. Interestingly, the measure that garnered the largest difference between visible and nonvisible minority respondents was the question on police fairness. Two-thirds (66.6 percent) of nonvisible minorities felt their local police did a "good" job treating people fairly compared with 58.1 percent of visible minorities. Conversely, 6 percent of nonvisible minorities felt the police did a "poor" job in this area compared with 11.1 percent of visible minorities (Cao 2011, p. 11).

A similar study was conducted by O'Conner (2008) using data from the 1999 GSS. O'Conner also found that visible minorities evaluated police performance more negatively than did nonvisible minorities. O'Conner's findings also indicate that younger people, males, crime victims, and those who live in high-crime neighborhoods were also more likely to express dissatisfaction with the police. Unfortunately, both of these studies utilize the "visible minority" category, combining all nonwhite racial groups into one, further masking racial differences. The studies are, therefore, unable to determine whether some racial groups hold more positive or negative views of the police than do others. This is particularly important given that other Canadian research has documented considerable racial difference in attitudes toward the police and criminal courts.

One of the largest studies to examine perceptions of police discrimination in Canada included a survey of more than 1,200 black, Chinese, and white adult Torontonians, conducted as part of the Commission on Systemic Racism in the Ontario Criminal Justice System in the early 1990s. This study was replicated in 2007 to determine the extent to which citizens' perceptions of bias had changed over the intervening 14-year period. The results indicate that perceptions of bias had increased among certain groups. For example, in 1994, three-quarters (76 percent) of black respondents felt that the police treat blacks worse than they do whites. By 2007, this figure had increased to 81 percent. Similarly, in 1994, 46 percent of Chinese respondents felt that the police treat Chinese worse than whites; by 2007, this figure had increased to 50 percent. Interestingly, white respondents' perceptions of bias against both black and Chinese Torontonians also increased over this period. In 1994, 51 percent of white respondents believed the police treat blacks worse than whites. By 2007, this figure had increased to 59 percent. Furthermore, in 1994, 26 percent of white respondents said they believed the police treat Chinese worse than whites. This figure increased very slightly to 27 percent in 2007 (Wortley 1996; Wortley and Owusu-Bempah 2009, pp. 465–66). Wortley and Owusu-Bempah also asked respondents about their perceptions of racial bias within the Ontario criminal courts. Respondents were asked, "if a black person and a white person committed the same crime, who would get the longer sentence?" (the same question was repeated substituting the black with a Chinese). Interestingly, perceptions of bias within the Ontario criminal courts had increased among respondents from all racial groups between 1994 and 2007. Respondents from all racial groups believed that blacks were most likely to be affected by bias in the Ontario criminal courts (see Wortley and Owusu-Bempah 2009, pp. 466–67).

No matter what the cause, negative attitudes toward the police and the remainder of the criminal justice system, including perceptions of criminal injustice, are cause for concern. As alluded to previously, public cooperation with the justice system depends on the system being viewed in a positive light (Brown and Benidict 2002). Furthermore, perceptions of bias or unfairness may justify criminal offending (Tyler 1990; Sherman 1993; Tyler2005; Wortley and Tanner 2008). And, although Canadian criminal justice agencies are implementing numerous strategies to develop community relations and provide equitable service, these initiatives have not been subject to evaluation. Thus, it is difficult to discern their impact. The research findings presented here indicate that there is still much room for improvement and signal the need for further research of this nature; perceptions of bias in the criminal justice system remain a major issue in Canadian society. Unfortunately, very little research attention has been paid to discrimination in Canadian police, courts, and correctional institutions. In the next section, we review the available literature on racial bias in the administration of criminal justice in Canada.

B. Racial Profiling

Over the past two decades, racial profiling has emerged as an important social issue in Canada. The Aboriginal community has long complained about biased police treatment. After the events of 9/11, Canada's South Asian and Arab communities also leveled allegations of racial profiling. However, most of the recent discussion in Canada has focused on the treatment of the black community. Numerous studies conducted in the United States and Great Britain—using a wide variety of research methodologies (i.e., field observations, qualitative interviews, general population surveys, and official statistics)—have identified that blacks are more likely to be stopped,

questioned, and searched by the police than whites (see reviews in Bowling and Phillips 2002; Tanovich 2006; Tator and Henry 2006). A similar picture is emerging in Canada. For example, James (1998) conducted intensive interviews with more than 50 black youth from six different cities in Ontario. Many of these youths reported that being stopped by the police was a common occurrence for them. There was also an almost universal belief that skin color, not style of dress, was the primary determinant of attracting police attention. James (1998, p. 173) concludes that the adversarial nature of these police stops contributes strongly to black youths' hostility toward the police (also see Neugebauer 2000). More recently, the Ontario Human Rights Commission (2003) gathered detailed testimonials from more than 800 people in Ontario—most of them black—who felt that they had been the victim of racial profiling.

The issue of profiling has also been explored through survey research. For example, a 1994 survey of Toronto residents found that one-third (30 percent) of black males had been stopped and questioned by the police on two or more occasions in the past 2 years. By contrast, only 12 percent of white males and 7 percent of Asian males reported multiple police stops. Multivariate analyses reveal that these racial differences in police contact cannot be explained by racial differences in social class, education, or other demographic variables. In fact, two factors that seem to protect white males from police contact—age and social class—do not protect blacks. Whites with high incomes and education, for example, are much less likely to be stopped by the police than whites who score low on social class measures. By contrast, blacks with high incomes and education are actually more likely to be stopped than are lower class blacks (see Wortley and Tanner 2003; Wortley and Kellough 2004).

A second survey, conducted in 2001, surveyed Toronto high school students about their recent experiences with the police (Wortley and Tanner 2005). The results of this study further suggest that blacks are much more likely than people from other racial backgrounds to be subjected to random street interrogations. For example, more than 50 percent of the black students report that they have been stopped and questioned by the police on two or more occasions in the past 2 years, compared to only 23 percent of whites, 11 percent of Asians, and 8 percent of South Asians. Similarly, over 40 percent of black students claim that they have been physically searched by the police in the past 2 years, compared to only 17 percent of their white and 11 percent of their Asian counterparts. Further analysis of this data suggests that racial differences in being stopped and searched by the police cannot be explained by racial differences in criminal activity, gang membership, drug and alcohol use, or public leisure activities (Wortley and Tanner 2005).

Fitzgerald and Carrington (2011), using data from the National Longitudinal Study of Children and Youth, also found that self-reported deviant behavior could not explain disproportionate minority contact with the police. Finally, a 2007 survey of Toronto adults found that black residents were three times more likely to be stopped and searched by the police in the past 2 years and that this racial disparity could not be explained by racial differences in criminality, drug and alcohol use, driving habits, use of public spaces, poverty, or residence within a high-crime community (see Wortley and Owusu-Bempah 2011b).

A second quantitative strategy for examining racial profiling involves the collection of data by the police themselves. In such cases, police officers are mandated to record the racial background of all people they decide to stop and search. Although such data collection strategies are quite common in both the United States and Great Britain, Kingston, Ontario is the only Canadian jurisdiction to conduct such a study. Beginning in the late 1990s, the Kingston Police Service received a number of complaints about racial profiling from the city's relatively small black community. Rather than ignore these allegations, Kingston Police Chief Bill Closs decided to engage in a groundbreaking data collection project. Despite strong resistance from police associations across the country, this pilot project went into the field in October 2003. For the next 12 months, the Kingston police were ordered to record the age, gender, race, and home address of all people they stopped and questioned—along with the time and location of the stop, the reason for the stop, and the final outcome of the interaction (i.e., arrest, ticket, warning, etc.). Information was ultimately recorded for more than 16,500 police stops conducted over a 1-year period (Wortley and Marshall 2005).

In general, the results of the Kingston Pilot Project mirror the results of racial profiling studies conducted in the United States and England. During the study period, the black residents of Kingston were three times more likely to be stopped at least once by the police than their white counterparts. Overall, the individual stop rate for black residents was 150 stops per 1,000, compared to only 51 per 1,000 for whites.[8] The results further indicate the individual stop rate is highest for the black male residents of Kingston (213 per 1,000), followed by black females (75 per 1,000), white males (74 per 1,000), and white females (29 per 1,000). An additional advantage of the Kingston study is that it gathered information on both traffic and pedestrian stops. Indeed, more than 40 percent of the 16,000 stops conducted during the study period were performed on pedestrians. Thus, if racial profiling does exist, we might expect that blacks would be more overrepresented in pedestrian stops than traffic stops—since the racial background of pedestrians should be more apparent to officers than the race of drivers. This is exactly what the results of the Kingston study reveal. Although black people are still greatly overrepresented in traffic stops (2.7 times), they are even more overrepresented in pedestrian stops (3.7 times). Finally, further analysis indicates that the racial differences in Kingston police stops cannot be explained by racial differences in age, gender, the location of the stop, or the reason for the stop. Interestingly, neither racial differences in observed or suspected criminal activity, nor racial differences in observed traffic violations could explain the higher stop rate for blacks (see Wortley and Marshall 2005).

Since the release of the Kingston pilot project, no other Canadian city has attempted to systematically collect information on the racial

background of people stopped and questioned by the police. However, following a hotly contested freedom of information request that ultimately took them to the Ontario Court of Appeal, the Toronto Star newspaper eventually obtained information on more than 1.7 million civilian "contact cards" that had been filled out by the Toronto police between 2003 and 2008. It should be stressed that these contact cards are not completed after every police stop. They are only filled out when individual police officers want to record, for intelligence purposes, that they have stopped and questioned a particular civilian. Contact cards contain various pieces of information including the civilian's name and home address, the reason for the stop, and the location and time of the encounter. These cards also include basic demographic information including age, gender, and skin color. Police argue that this information helps them keep track of who is present on the streets at certain times and locations and that this information may help them identify potential crime suspects and victims.

Critics argue that these contact cards provide insight into police surveillance practices and largely reflect the types of neighborhoods and civilians that come under enhanced police scrutiny. Interestingly, as with the Kingston data on police stops, blacks are grossly overrepresented in the Toronto police service's contact card database. Although they represent only 8 percent of the Toronto population, blacks were the target of almost 25 percent of all contact cards filled out during the study period. Furthermore, the data indicate that blacks were issued a disproportionate number of contact cards in all Toronto neighborhoods—regardless of the local crime rate or racial composition (Rankin 2010a, 2010b). As with the Kingston data, these findings are quite consistent with the racial profiling argument.

Racial profiling has two potential consequences for the black community in Canada. Firstly, because the black community is subject to much greater levels of police surveillance, members of this community are also much more likely to be caught when they break the law than are whites who engage in exactly the same forms of criminal activity. For example, in the Toronto high school survey discussed earlier, 65 percent of the black drug dealers (defined as those who sold drugs 10 or more times in the past 12 months) report that they have been arrested at some time in their life, compared to only 35 percent of the white drug dealers. In other words, racial profiling may help explain why blacks comprise the majority of people charged with drug crimes in North America, even though the best criminological evidence suggests that the vast majority of drug users and sellers are white. The second major consequence of racial profiling is that it serves to further alienate blacks from mainstream Canadian society and reinforces perceptions of discrimination and racial injustice. Indeed, research strongly suggests that blacks who are frequently stopped and questioned by the police perceive much higher levels of discrimination in the Canadian criminal justice system than do blacks who have not been stopped. Being stopped and searched by the police, therefore, seems to be experienced by blacks as evidence that race still matters in Canadian society—that no matter how well you behave, how hard you try, being black means that you will always be considered one of the "usual suspects."

C. Police Use of Force

Highly publicized American cases of police violence against blacks (i.e., Rodney King, Amadou Diallo, Abner Louima, etc.) serve to reinforce the perception that North American police officers are biased against members of the black community. However, high-profile cases of police brutality involving black and Aboriginal victims are not limited to the United States. The names of people like Dudley George, Albert Johnson, Lester Donaldson, Wade Lawson, Marcellus Francois, and Sophia Cook are frequently used to illustrate that police use of force is a problem faced by minority groups in Canada as well. Unfortunately, investigations of racial bias with respect to the police use of force are extremely rare in this country.

A recent study of Ontario's Special Investigations Unit (SIU) is one exception. This study reveals that both blacks and Aboriginals are highly overrepresented in police use of force cases (Wortley 2006). Whites and members of other racial groups—including South Asians and Asians—are significantly underrepresented in such cases. The SIU is a civilian law enforcement agency that conducts independent investigations into all incidents in which a civilian is seriously injured or killed by police actions in Ontario. Between January 2000 and June 2006, the SIU conducted 784 investigations. Although blacks are only 3.6 percent of the Ontario population, they represent 12 percent of all civilians involved in SIU investigations, 16 percent of SIU investigations involving police use of force, and 27 percent of all investigations into police shootings. Additional analysis indicates that the police shooting rate for black Ontario residents (4.9 per 100,000) is 7.5 times higher than the overall provincial rate (0.65) and 10.1 times greater than the rate for white civilians (0.48). Finally, when we only examine cases in which the death of a civilian was caused by police use of force, the overrepresentation of blacks becomes even more pronounced. Blacks represent 27 percent of all deaths caused by police use of force and 34.5 percent of all deaths caused by police shootings. The black rate of police shooting deaths (1.95) is 9.7 times greater than the provincial rate (0.20) and 16 times greater than the rate for whites (0.12). The results for Aboriginals are strikingly similar.

These findings, although suggestive, do not constitute proof that the Canadian police are racially biased with respect to the use of force. Indeed, the fact that these cases resulted in few criminal charges (and no convictions) could be seen as evidence that these shootings were justified. This interpretation is consistent with American research (see Fyfe 1988), which suggests that, once situational factors (i.e., whether the suspect had a gun or was in the process of committing a violent felony) have been taken into account, racial differences in the police use of force are dramatically reduced. Nonetheless, until such detailed research is conducted within Canada, questions about the possible relationship between race and police violence will remain.

D. The Arrest Situation

Early American studies of police arrest practices suggested that the racial minorities were much more likely to be arrested for minor crimes (drug use, minor assault, vagrancy, etc.) than were whites (see extensive reviews in Bowling and Phillips 2002; Walker, Spohn, and Delone 2004; Gabbidon and Greene 2005). However, recent evidence suggests that racial bias in police arrest decisions may be declining. For example, contemporary observational studies of police–citizen encounters conducted in the United States suggest that, controlling for the seriousness of criminal conduct, race is unrelated to the police decision to arrest (see Klinger 1997; Delisi and Regoli 1999). Nonetheless, a number of recent American studies suggest that it is the race of the victim—not the race of the offender—that may impact the arrest decision. In other words, there is considerable evidence to suggest that the police are more likely to make arrests in cases involving white than nonwhite victims and are especially likely to make arrests when the case involves a white victim and a minority offender (see Smith, Visher, and Davidson 1984; Stolzenberg, D'Alessio, and Eitle 2004; Parker, Stults, and Rice 2005). Some have argued that this is direct evidence that the police put a higher value on white than minority victims and thus devote more effort and resources to solving such crimes (see Mann 1993). These findings are also consistent with the "racial threat" hypothesis, which suggests that the police will treat interracial crimes involving minority offenders and white victims as particularly heinous.

Unfortunately, studies that examine the impact of both offender and victim race on arrest decisions have not yet been conducted in Canada. However, recent Canadian evidence does suggest that race may influence police behavior once an arrest has been made. An analysis of more than 10,000 Toronto arrests—between 1996 and 2001—for simple drug possession reveals that black suspects (38 percent) are much more likely than white suspects (23 percent) to be taken to the police station for processing. White accused persons, on the other hand, are more likely to be released at the scene. Once at the police station, black accused persons are held overnight, for a bail hearing, at twice the rate of whites. These racial disparities in police treatment remain after other relevant factors—including age, criminal history, employment, immigration status, and whether or not the person has a permanent home address—have been taken into statistical account (Rankin et al. 2002a, 2002b). Studies that have examined the treatment of young offenders in Ontario have yielded very similar results (Commission on Systemic Racism 1995).

E. Pretrial Detention

The bail decision is recognized as one of the most important stages of the criminal court process. Not only does pretrial detention represent a fundamental denial of freedom for individuals who have not yet been proved guilty of a crime, it has also been shown to produce a number of subsequent legal consequences. Controlling for factors like type of charge and criminal record, previous research suggests that offenders who are denied bail are much more likely to be convicted and sentenced to prison than their counterparts who have been released (see Friedland 1965; Reaves and Perez 1992; Walker, Spohn, and Delone 2004). Thus, racial disparities in pretrial outcomes could have a direct impact on the overrepresentation of racial minorities in American and Canadian correctional statistics.

A large number of American (see reviews in Demuth and Steffensmeir 2004; Free 2004) and British studies (see Bowling and Phillips 2002) have extensively documented the fact that nonwhites are more likely to be held in pretrial detention than whites. A similar situation seems to exist in Canada. An examination of 1,653 cases from the Toronto courts, conducted on behalf of the Commission on Systemic Racism in the Ontario Criminal Justice System, revealed that blacks are less likely to be released by the police at the scene and more likely to be detained following a show-cause hearing. This disparity is particularly pronounced for those charged with drug offenses. Indeed, the study found that almost one-third of black offenders (31 percent) charged with a drug offense were held in detention before their trial, compared to only 10 percent of whites charged with a similar offense. This profound racial difference remains after other relevant factors—including criminal history—have been statistically controlled (Roberts and Doob 1997).

A second Toronto-area study provides additional evidence of racial bias in pretrial decision making (Kellough and Wortley 2002). This research project tracked more than 1,800 criminal cases appearing in two Toronto bail courts over a 6-month period in 1994. Overall, the results suggest that 36 percent of black accused are detained before trial, compared to only 23 percent of accused from other racial backgrounds. Race remains a significant predictor of pretrial detention after statistically controlling for factors associated with both flight risk (i.e., employment status, home address, previous charges for failure to appear, etc.) and danger to the public (i.e., seriousness of current charges, length of criminal record, etc.). Additional analysis, however, suggests that black accused are more likely to be detained because they tend to receive much more negative "moral assessments" from arresting officers. Moral assessments refer to the subjective personality descriptions that the police frequently attach to show-cause documents. The data suggest that police officers, on average, spend more time justifying the detention of black than white accused. Clearly, this is evidence that police discretion extends from the street and into the courtroom—at least at the pretrial level. Finally, the results of this study suggest that rather than managing risky populations, pretrial detention is a rather important resource that the prosecution uses (along with overcharging) to encourage (or coerce) guilty pleas from accused persons. Those accused who are not held in pretrial custody, by contrast, are much more likely to have all of their charges withdrawn.

It is interesting to note that, even when they are released on bail, black accused are still subjected to greater court surveillance.

Controlling for legally relevant variables, black accused out on bail tend to receive significantly more release conditions—including curfews, area restrictions, and mandatory supervision requirements—than are whites. Since blacks are subject to a greater number of release conditions and are more likely to be arbitrarily stopped and investigated by the police (see evidence on racial profiling presented earlier), it is not surprising to find that blacks are greatly overrepresented among those charged with breach of condition offenses (Kellough and Wortley 2004).

F. Race and Sentencing

American and British research on race and sentencing has produced mixed results. Some studies have found that blacks and other minority defendants are treated more harshly (Hudson 1989; Shallice and Gordon 1990; Hood 1992; Mauer 1999), some studies have found that they are treated more leniently (Wilbanks 1987), and others have found no evidence of racial differences in sentencing outcomes (Lauritsen and Sampson 1998; Bowling and Phillips 2002). Recent reviews of the American research (see Spohn 2000; Johnson 2003; Ulmer and Johnson 2004) indicate that racial minorities are sentenced more harshly than whites if they are (1) young and male, (2) are unemployed or have low incomes, (3) are represented by public defenders rather than a private attorney, (4) are convicted at trial rather than by plea, (5) have serious criminal records, (6) have been convicted of drug offenses, or (7) have been convicted of less serious crimes (i.e., racial differences in sentencing are greatest among those convicted of drug offenses or less serious crimes).

Canadian research on race and sentencing has also produced contradictory findings. For example, although Aboriginal offenders are more likely to receive sentences of incarceration for relatively minor offenses, they frequently receive more lenient sentences when convicted of more serious crimes. For example, one study found that only 20 percent of Aboriginals convicted of homicide receive life sentences, compared to more than half of non-Aboriginal offenders (La Prairie 1990). Similarly, using 5 years of federal admissions data, Moyer (1985) found that sentence length favored Aboriginal accused more than whites for a number of violent crimes.

Compared to research on Aboriginal offenders, relatively little Canadian research has focussed on the sentencing outcomes of blacks or other racial minorities. Those studies that do exist, however, point to the possibility of racial discrimination. For example, Mosher's (1996) historical analysis of the Ontario courts from 1892 to 1930 reveals that black offenders experienced much higher rates of conviction and harsher sentences than their white counterparts. Multivariate analyses of this data reveal that observed racial differences in sentencing severity cannot be explained by other legally relevant variables (Mosher 1996, p. 432). More recently, the Commission on Systemic Racism in the Ontario Criminal Justice System compared the sentencing outcomes of white and black offenders convicted in Toronto courts during the early 1990s. The results of this investigation revealed that black offenders—particularly those convicted of drug offenses—are more likely to be sentenced to prison. This racial difference remains after other important factors—including offense seriousness, criminal history, age, and employment—have been taken into statistical account. Toni Williams (1999, p. 212) concludes that "this finding indicates that the higher incarceration rates of black than white convicted men is partly due to judges treating them more harshly for no legitimate reason." However, Roberts and Doob (1997) caution that the Commission's research suggests that the effect of race is statistically weaker at the sentencing stage than at earlier stages of the justice process and may be limited to certain offense categories (i.e., drug offenses).

Clearly, research on racial differences in sentencing is at an early stage in Canada. One factor that has yet to be examined is the impact of the victim's racial background. However, American research strongly suggests that, regardless of their own race, individuals who victimize white people are sentenced much more harshly by the courts than those who victimize blacks and other racial minorities (Cole 1999; Spohn 2000; Johnson 2003; Urbina 2003). This fact might help explain why minority offenders—who usually victimize people from their own racial background—sometimes appear to be treated more leniently at the sentencing stage. Finally, the sentencing process appears to be particularly harsh on offenders who have victimized white females. Recent research, for example, strongly suggests that homicides involving minority males and white females are the most likely to result in a death sentence (see Holcomb, Williams, and Demuth 2004).

G. Race and Corrections

As with other stages of the criminal justice system, very little Canadian research has examined the treatment of racial minorities within corrections. However, consistent with studies on the police and the criminal courts, the research that has been conducted suggests that some forms of racial bias exist behind prison walls. The Commission on Systemic Racism in the Ontario Criminal Justice System, for example, found that whereas racist language and attitudes plague the environments of many Ontario prisons, and racial segregation is often used as a strategy for maintaining order, correctional officials do not acknowledge that racism is a significant management problem (Commission on Systemic Racism 1994). Commission researchers also found evidence of racial bias in the application of prison discipline. Minority inmates are significantly overrepresented among prisoners charged with misconducts—particularly the types of misconducts in which correctional officers exercise greater discretionary judgment. This fact is important because a correctional record for such misconducts is often used to deny parole and limit access to temporary release programs. Indeed, exploratory research suggests that blacks and other racial minority inmates, controlling for other relevant factors, are somewhat more likely to be denied early prison

release (Mann 1993; Commission on Systemic Racism 1995). Unfortunately, Canadian research has yet to explore possible racial discrimination in parole decisions within federal correctional facilities. Finally, Commission researchers highlighted the fact that current rehabilitation programs do not meet the cultural and linguistic needs of many racial minority inmates (Commission on Systemic Racism 1994, 1995). The current correctional system, it is argued, caters to white, Euro-Canadian norms. The treatment needs of blacks and other racial minority prisoners are either unacknowledged or ignored. Ultimately, inadequate or inappropriate rehabilitation services for minority inmates may translate into higher recidivism rates for nonwhite offenders—a fact that may further contribute to their overrepresentation in the Canadian correctional system.

V. Democratic Racism and Criminal Justice in Canada

The de facto ban on the collection and dissemination of race-based justice statistics in Canada has made it exceeding difficult for Canadian criminologists to study racial differences in crime and criminal justice outcomes. The limited data that are available has identified four major themes: (1) black and Aboriginal Canadians are significantly overrepresented in Canada's federal and provincial correctional systems—at levels exceeding those of African Americans in the United States; (2) there is some evidence to suggest that Aboriginal and black populations are overrepresented with respect to violent offending and victimization; (3) a large proportion of Canada's minority populations perceive bias in the criminal justice system; and (4) available research suggests that public perceptions are accurate—racial bias exists in the administration of criminal justice in Canada.

It should be stressed that these findings are preliminary. Nevertheless, research that has been conducted suggests that race, crime, and criminal justice are important issues within the Canadian context. Unfortunately, despite Canada's reputation as a diverse and tolerant nation, there is evidence to suggest that the Canadian government does not want to openly deal with such issues. This view fits well with the theory of "democratic racism." The main characteristic of democratic racism is the justification of the inherent conflict between the egalitarian values of liberalism, justice, and fairness, and the racist ideologies reflected in the collective mass belief system, as well as in the racist attitudes, perceptions, and assumptions of individuals (Henry and Tator2005, p. 19). Democratic racism, then, is an ideology that permits the emergence of two conflicting sets of values: a commitment to democratic principles such as justice and equality on one hand, which conflict but coexist, with the solidification of racialized beliefs and practices on the other (Henry and Tator 2005, p. 22).

One manifestation of democratic racism, according to Henry and Tator (2005) is the discourse of denial; the principal assumption that racism cannot and does not exist in a liberal democracy such as Canada (2005, pp. 24–25). We see clear evidence of denials of racism in the initial response of some police executives to allegations of racial profiling when the practice first arose as a public issue in Canada. For example, former chief of the Toronto Police Service, Julian Fantino remarked "we do not do racial profiling.... There is no racism ... we do not look at, nor do we consider race or ethnicity, or any of that, as factors of how we dispose of cases, or individuals, or how we treat individuals" (Toronto Star 2002b). Similarly, Craig Brommell, president of the Toronto Police Association at the time, stated in a news release that "[no] racial profiling has ever been conducted by the Toronto Police Service" (Porter 2002). Even local politicians weighed in to offer their denials of racism and support of the police. Mayor Lastman declared "I don't believe that the Toronto Police engage in racial profiling in any way shape or form" (Toronto Star 2002a). Interestingly, one of the first pronouncements made by current chief Bill Blair, Julian Fantino's successor, was an admission that racial profiling by the police was in fact a reality in Toronto (James 2005). Such denials also took place in the nation's capital, Ottawa. The Chief of the Ottawa Police Service similarly denied that his police force practices racial profiling after a deputy chief told a federally sponsored forum that the Ottawa police did in fact conduct racial profiling (Tator and Henry 2006, p. 129). Six years later, in the summer of 2011, the Ottawa Police service approved and implemented a Racial Profiling Policy (Ottawa Police Service 2011).

Denials of racism in the administration of criminal justice are not limited to the policing sector. The following statement is illustrative of such denials within the court system: "[c]rown attorneys have no control over intake and arrest, we deal with everyone equally.... I have never noticed that one group is treated differently, I don't care whether someone is black, white, or green" remarked Stephen Legget, head of crown counsel at a Toronto court (Toronto Star 1992, as quoted in Henry and Tator 2005, p. 145). Similarly, judges have been criticized for failing to acknowledge and take judicial notice of the existence of racism in the justice system when the matter has been presented before them in court. Regina v. Brown is case in point.

Henry and Tator (2005) also argue that even when uncovered, little action has been taken to respond to allegations of inequality and racial bias. This, too, is an important feature of democratic racism that Henry and Tator consider indicative of a "lack of political will" (2005, p. 145). The government's refusal to systematically collect and publish race-based criminal justice statistics is one key manifestation of this lack of political will. Available data, official and otherwise, show that (1) disparities in Canadian criminal justice outcomes exist (Manitoba 1991; Commission on Systemic Racism 1995; Public Safety Canada 2012), (2) racial bias exists within the Canadian criminal justice system and has been confirmed by Canadian courts (Toronto [City] Police Service v. Phipps [2010], 325 D.L.R. [4th] 701 [Ont. Div. Ct.]; R. v. Huang [2010] B.C.J. No. 2627 [P.C.]; Pieters v. Peel Law Association [2010] HRTO 2411; McKinnon v.

Ontario [Correctional Services] 2011 HRTO 591 [CanLII][9]). At the same time that police and other criminal justice agents claim to provide equitable service to all Canadians, they systematically withhold information that is essential to the examination and, ultimately, the elimination of any racial disparities that may exist (Wortley and Owusu-Bempah 2011b). In fact, a lack of data has enabled the Canadian justice system to deflect allegations of bias by arguing that claims of racism lack the statistical proof necessary to substantiate them. Personal testimony, such as the more than 800 submissions provided to the Ontario Human Rights Commission's study on racial profiling, are dismissed as the anecdotal grievances of unhappy and angry citizens.

The lack of will to ameliorate racial disparity is also evident in the lack of action taken to institute the recommendations of government commissions, task forces, and other bodies that have been set up to examine racial inequality and to develop solutions to such problems. The Commission on Systemic Racism in the Ontario Criminal Justice System, for example, was established in the early 1990s by a New Democrat government to inquire into and make recommendations about systemic racism in criminal justice practices, procedures, and policies in Ontario. In its final report, the Commission made almost 80 recommendations, few of which have actually been implemented. Similarly, the Roots of Youth Violence Review, established in the wake of the high school shooting of Jordan Manners in Toronto, made numerous recommendations relating to policing, the justice system, and other sectors of society. Again, little has been done to address these recommendations. In a sense, it appears that government action to resolve problems of racial disparity and discrimination is simply to establish these commissions, not to act on their findings.

Even where measures are taken to reduce racial disparity and discrimination, they have been criticized as lacking in substance. The training of police officers is one example. Over the past several decades, there has been increased pressure and, as a result, increased implementation of antiracism training for police officers, especially in Canada's urban centers. However, there has been no clear agreement as to what the goals of these training programs should be, except at the most general level (Henry and Tator 2005, p. 170). Furthermore, this training has been provided within an organizational environment that has not always been particularly supportive and open to change. Such training is often not taken seriously by police officers nor, at times, by the trainers. Police officers also remain heavily influenced by the social and structural context of police institutions, thus questioning the efficacy of antiracism training. Although antiracism training has made its way into the policing world, most practicing judges, defense counsel, and other members of the justice system have not received any comprehensive training on the manifestations of racism in public systems (Henry and Tator 2005, p. 147). The efficacy of antiracism training with police could be ascertained through rigorous evaluation of such programs; this, too, has not taken place. Nor have there been thorough evaluations of most of the other measures that have been implemented such as community relations/mobilization programs, and antidiscrimination/equality policies (Stenning 2003). The lack of evaluation signals a lack of concern for the effectiveness of these initiatives. This is somewhat surprising, given that public money is at stake.

Finally, democratic racism in Canadian criminal justice is manifested in the discourse of "blaming the victim." According to this discourse, black and Aboriginal Canadians are overrepresented in criminal justice statistics because they commit more crime. Current Toronto police chief Bill Blair did this recently when questioned about the overrepresentation of black and brown people in police contacts in the city. Data analyzed by the Toronto Starshowed that black males aged 15–24 were stopped and documented 2.5 times more often than white males of the same age (Rankin 2010a). Blair stated "[w]e look at it as neighborhoods because that's where the crime is taking place. There's a whole bunch of reasons, there are. I don't think that race is one of them" (Toronto Star2010). Although Blair acknowledged factors that lead to criminality such as poverty, unemployment, and marginalization, what is ironic is that these same data showed blacks to be overrepresented in more affluent areas of the city with large white populations and small numbers of racial minorities.

Canada's apparent amnesia with regards to its historical treatment of racialized peoples and its involvement in both French and British colonialism continue to haunt racial minorities in the country. As the previous review has demonstrated, the significant racial disparities in one of Canada's most important social institutions, its criminal justice system, are legacies of this past. Unfortunately, the current push by our conservative government to introduce mandatory minimum sentences for drug and gun crimes, not unlike those being repealed in many U.S. jurisdictions, indicates that we are moving further away from remedying these issues.

V. Implications

As the this review documents, research on race, crime, and criminal justice in Canada is quite limited in comparison to other English-speaking, Western nations. This is especially true when it comes to exploring racial differences in criminal offending and victimization. As emphasized throughout this essay, a major impediment to examining these issues is the lack of race-based criminal justice data. The systematic collection and public release of racial data would enable researchers to further understand how race may be related to criminal offending and victimization, and to determine the extent to which the racial background of both offenders and victims influences criminal justice decision making and outcomes. It is also important to note that, to date, the race-based research that has been conducted is also limited with respect to geography. Despite great regional differences in the racial composition of the Canadian population, the province of Ontario, and the City of Toronto in particular, has served as the site for most of the existing research in this area. In sum,

there is a great need for more research in this field in the Canadian context. Next, we briefly discuss specific areas for future research and how such research might impact criminal justice policy in Canada.

A. Future Research Areas

Further research in the Canadian context is needed to document racial differences in victimization and offending and to identify areas that require criminal justice and social policy attention. Having established racial differences in rates of offending, victimization, and representation in criminal justice statistics, future research should examine the role that race and ethnicity play in explaining these differences. For example, our own work in Toronto communities has demonstrated a divide between blacks from continental Africa and those from the Caribbean in terms of their involvement in crime and attitudes toward the justice system. As current projections anticipate that the Canadian population will become increasingly diverse and Canada's racialized populations grow, research on intragroup differences become more significant (Statistics Canada 2010). Further research into the suppression of racial data within the criminal justice system, and the reasons for this suppression, would be useful to criminologists and other academics attempting to conduct research in the field. This line of research should document the availability of racial data in the Canadian criminal justice system, as well as the feasibility of expanding the collection of race-based data throughout the system.

B. Policy Implications

Government implemented or mandated systematic data collection, analysis, and reporting of racial data from the criminal justice system is needed to develop a better understanding of the nature of race, crime, and criminal justice in Canada. The release of these data would allow for the testing of criminological theories and the development of criminal justice policy. It would also allow for the evaluation of criminal justice policies and practices aimed at reducing racial disparities and discrimination. These data would also help determine whether justice initiatives more generally have a disproportionate impact, negative or positive, on Canada's racial minority communities. Furthermore, effort is needed to improve those socioeconomic conditions of racial minorities that lead to crime. A number of characteristics, common among racial minority groups, increase their likelihood of involvement in crime as both perpetrators and victims. These include, but are not limited to being highly concentrated, being relatively young, facing a double-digit income gap compared with the rest of the Canadian population, experiencing higher than average rates of unemployment and discrimination in the workplace, deepening levels of poverty, and having differential access to housing, resulting in neighborhood segregation (Galabuzi and Labonte 2002).

Further effort should be directed at improving relations between racial minority groups and the criminal justice system—particularly the police. Current efforts by the police, such as "community consultative committees," are hampered by the realities racial minorities face when they have first-hand experience with the police and relay these experiences to friends and families. Such efforts would include fostering attitudinal changes on the part of criminal justice personnel, as well as efforts to recruit a more racially diverse workforce. The identification of laws, policies, and practices that disproportionately impact racialized Canadians is warranted, especially in light of recent amendments to the Criminal Code of Canada There is a need not only to focus on the impact that new laws, policies, and practices may have on racial minorities' experiences with the criminal justice system, but also to explore how perceptions of and contact with the Canadian criminal justice system impact how racial minorities interact with other social institutions, including those in the education and employment sectors.

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Notes:

[1] Population estimates for each racial group were derived from the 2006 Census (Chui and Maheux 2008).

[2] The 2011 federal correctional statistics provided in this table include inmates within federal prisons and those under federal community supervision (Public Safety Canada 2012).

[3] The "Asian" category includes people of Chinese, Japanese, South-East Asian, Korean, or Filipino descent.

[4] The "South Asian" category includes people of Indian, Pakistani, Sri Lankan, or Tamil descent.

[5] The "West Asian" Category includes people of Arab or other Middle-Eastern descent.

([1]) The Canadian Employment Equity Act defines visible minorities as "persons, other than Aboriginal peoples, who are non-Caucasian in race or nonwhite in colour" (Department of Justice 2005).

([2]) Vickers (2002).

([3]) This essay focuses on race rather than ethnicity in the context of crime and criminal justice in Canada. Although ethnicity has become more important in influencing experiences with crime and criminal justice since the terror attacks of 9/11, criminological research in Canada has, for the most part, focused on racial rather than ethnic differences.

([4]) "The objective of the Integrated Criminal Court Survey is to develop and maintain a database of statistical information on appearances, charges, and cases in adult [and youth] criminal courts.... It includes information on the age and sex of the accused, case decision patterns, sentencing information regarding the length of prison and probation, and amount of fine, as well as case-processing data such as case elapsed time" (Statistics Canada 2011b).

([5]) "The Integrated Correctional Services Survey ... collects annual data on the delivery of adult [and youth] correctional services. Key themes include new admissions (commencements) to correctional programs of sentenced custody, probation, conditional sentences, and other community-based programs. The survey also captures information on conditional releases to the community including parole and statutory release. In addition, the survey collects aggregate information on the financial and human resources involved in the delivery of adult [and youth] correctional services" (Statistics Canada 2011a).

([6]) Quebec gave us a more detailed breakdown of inmates by ethnicity and country of origin—not race. Most black Quebec inmates, therefore, were categorized as either Franco or Anglo-Canadian.

([7]) "Nonvisible minorities" include single-origin white, single-origin Aboriginal, multiple-origin white/Latin American, and multiple-origin white/Arab-West Asian respondents (Cao 2011, p. 8).

([8]) It should be noted these stop rates were calculated after eliminating all police stops that involved people who lived outside of the City of Kingston. Furthermore, each individual who was stopped during the study period was only counted once. In other words, the rates reported above were not inflated by individuals who had been stopped on multiple occasions.

([9]) Complainants in the latter two of these cases were individuals who work within the criminal justice system.

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ASSIMILATION THROUGH INCARCERATION: THE GEOGRAPHIC IMPOSITION OF CANADIAN LAW OVER INDIGENOUS PEOPLES

by

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Abstract

The disproportionate incarceration of indigenous peoples in Canada is far more than a socio-economic legacy of colonialism. The Department of Indian Affairs (DIA) espoused incarceration as a strategic instrument of assimilation. Colonial consciousness could not reconcile evolving indigenous identities with projects of state formation founded on the epistemological invention of populating idle land with productive European settlements. The 1876 *Indian Act* instilled a stubborn, albeit false, categorization deep within the structures of the Canadian state: "Indian," ward of the state. From "Indian" classification conferred at birth, the legal guardianship of the state was so far-reaching as to make it akin to the control of incarcerated inmates. As early iterations of the DIA sought to enforce the legal dominion of the state, "Indians" were quarantined on reserves until they could be purged of indigenous identities that challenged colonial hegemony. Reserve churches, council houses, and schools were symbolic markers as well as practical conveyors of state programs. Advocates of Christianity professed salvation and taught a particular idealized morality as prerequisites to acceptable membership in Canadian society. Agricultural instructors promoted farming as a transformative act in the individual ownership of land. Alongside racializing religious edicts and principles of stewardship, submission to state law was a critical precondition of enfranchisement into the adult milieu. When indigenous identities persisted, children were removed from their families and placed in residential schools for intensive assimilation. Adults and children deemed noncompliant to state laws were coerced through incarceration. Jails were powerful symbols of the punitive authority of the Dominion of Canada. Today, while the overrepresentation of Aboriginal persons in prisons is a matter of national concern, and critiques of systematic racism dismantle ideologies of impartial justice, the precise origins of indigenous imprisonment have not been identified. The DIA was so intimately invested in assimilation through incarceration that lock-ups were erected with band funds on "Indian lands" across Canada. Archival documents and the landscape of Manitoulin Island make this legal historical geographical analysis of assimilation through incarceration possible.

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Chapter 1

Introduction: Assimilation Through Incarceration

In Kingston, Ontario, the Correctional Service of Canada posts a warning outside Kingston Penitentiary, the first such facility in Upper Canada. The sign cautions all who may enter that Kingston Penitentiary and its grounds are a federal reserve. In the Canadian vernacular, a "reserve" is a federally-sanctioned place for First Nations peoples. "Indian Reserves" are legal creations that certainly do not reflect the full extent of traditional indigenous territories and may not even be located on traditional lands. Rather, they are geographies of legal exception within a state that struggles to come to terms with the indigenous peoples who inhabit them and, reluctantly, with those who maintain social and legal ties to reserves even when they choose to reside elsewhere. As this dissertation will demonstrate, the notification that Kingston Penitentiary falls into the legal-geographical category of a government "reserve" is especially salient because of the disproportionately high numbers of Aboriginal persons incarcerated in federal and provincial prisons.

Indigenous communities and individuals are major subjects of Canada's current legal and justice systems. Geographical connection, personal identity, family membership, social association, racialized phenotypical traits, and legal status under the *Indian Act* are all ways in which individuals are identified as "Indians" by the people who translate the structures of the criminal justice system into practice. A literature review reveals that scholarly, political, and indigenous efforts to lift the mantle of institutionalized racism recognize that the crux of Aboriginal overrepresentation in prison lies in Canada's colonialist socio-legal structures. In parallel to research proceeding on the sociological parameters of contemporary imprisonment, academics in many disciplines are illuminating the ways in which reserves and residential schools operated as part of the Department of Indian Affairs' program of "civilization." Epistemologies of racism, abuse, violence, and poverty form important bridges in contemporary scholarship yet there is sparse literature to indicate the role that the Department of Indian Affairs played in incarceration.

Clearly, the colonial antecedents of overrepresentation fly in the face of Western aspirations to "blind justice" symbolized by Lady Justice holding aloft the scales of her vocation. It is less evident in the literature precisely how, where, and why colonial injustice has led to

contemporary imprisonment through any other means than historic trauma. Imprecision can lead to the disconcerting racialized deduction that the seeds of criminality have been embodied within indigenous peoples themselves: that indigenous persons are damaged at their very core and require drastic remedial intervention in order to circumvent criminal activity.

Imprisonment is more than a by-product of socio-economic inequality stemming from colonialism. Justice may take many forms. However, state justice is fundamentally embedded in the politics of territorial control. The very existence of indigenous peoples unsettled colonial ideological claims to the lands that became Canada. Colonial governments devised programs of geographic segregation in order to assimilate indigenous peoples into state visions. Assimilation through incarceration is rooted in the early days of colonial settlement when the inaccuracy of early predictions that "Indians" could be segregated on temporary reserves where they would either die out or assimilate to persuasive models of agrarian Christian life became apparent. Invasive measures of geographic control were applied in order to contain perceived threats and hasten the resolution of "the Indian problem." The vestiges of many of the laws, policies, and procedures first instituted during European settlement can still be found in Canadian societal conventions, legal structures, and government legislation. Accurately situating assimilation through incarceration requires careful legal historical-geographical scholarship and a scrupulous balance between the centralized bureaucracies of colonizing government, particular legal geographical contexts, and multivariate indigenous negotiations of totalizing state claims.

The specific origins of indigenous imprisonment in Canada are difficult to discern; however, Manitoulin Island, a landscape of separation on many scales, indicates how these legal inequalities were instituted. Incarceration was intentionally propagated by the Department of Indian Affairs as a tool of assimilation. Far from current ideals of justice, incarceration was entirely in keeping with the coercively paternalistic spirit of Indian Affairs as the colonialist state imposed British forms of law over indigenous lands and peoples. Interactions between the Department of Indian Affairs and the indigenous peoples of Manitoulin Island are especially helpful in establishing key modalities of Aboriginal imprisonment because of the island's particular physical and human geographies. As Canada's largest freshwater island, Manitoulin Island enjoys exceptional grandeur in the national imagination.

Manitoulin Island is a particularly opulent palimpsest of colonialist segregation because of its bounded nature and intriguing incidents including the razing of the Island by the Haudenosaunee in the mid-seventeenth century, the "return" of the Odawa, Ojibwa, and

Pottawatomi following the War of 1812, and the failed 1836 attempt of Sir Francis Bond Head to use the island as a hospice for the entire "race" of "Indians."

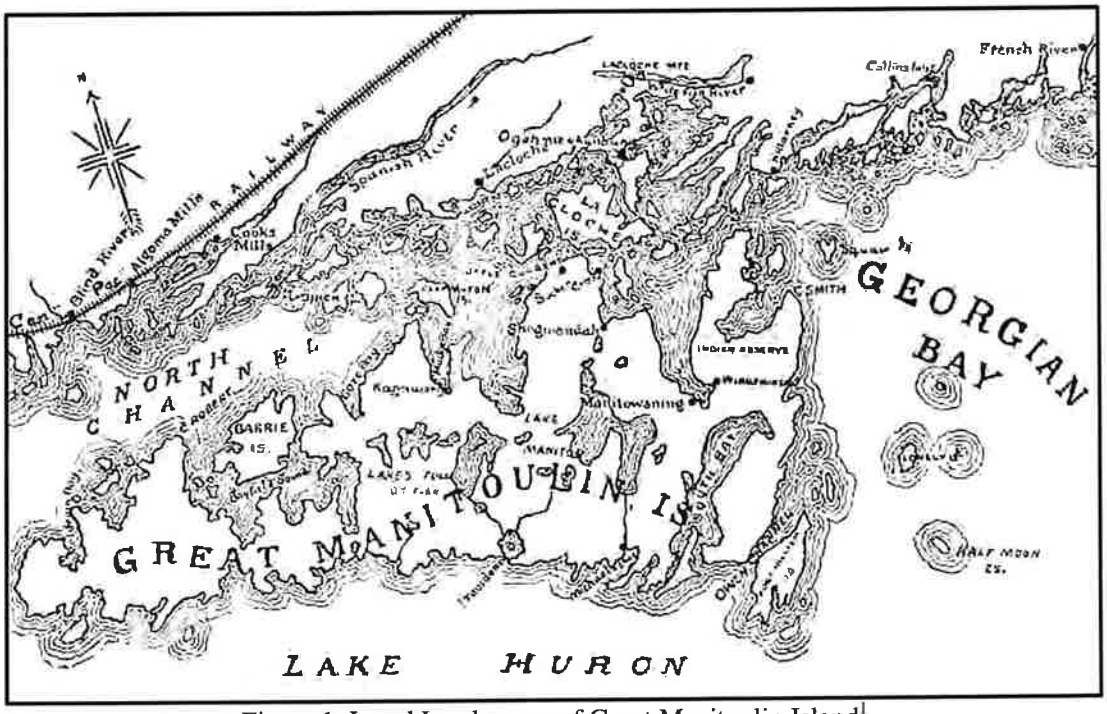

Figure 1: Legal Landscapes of Great Manitoulin Island[1]

Burden's 1860 map of Manitoulin Island illustrates the position of many of the places discussed in this dissertation. Take note of the north shore of Lake Huron across from Little Current and Sucker Creek, Gore Bay to their west, Georgian Bay and Lonely Island to the east, the proximity of Manitowaning and Wikwemikong in parallel yet contrasting legal geographies, and the southward position of Providence Bay.

For the highly-centralized Department of Indian Affairs, Manitoulin Island held a crucial position within the national program of assimilation as a place of socio-spatial segregation where assimilative programs could be tested on First Nations peoples. Nevertheless, neither treaty-making, surveying, nor settlement unfolded as planned by the colonizing bureaucracy. Fishing disputes off the shores of Wikwemikong Unceded Territory demonstrated the determination of indigenous peoples to protect resources and maintain order in correspondence with their own ontologies. While revelations of organized indigenous strength threatened the colonial state, legal instruments such as the *Indian Act* served to criminalize the "Indian" by the very legal-geographic terms of that designation. Provisions of the 1876 *Indian Act* apportioned disproportionate

[1] Adapted from Harold Nelson Burden, *Manitoulin, or, Five years of church work among Ojibway Indians and lumbermen, resident upon that island or in its vicinity*, (London: Simpkin, Marshall, Hamilton, Kent, 1895).

penalties to people who appeared to bear the phenotypical or social traits of "Indians" whether or not they had "status." Alongside this legislation, the Department of Indian Affairs undertook the construction of lock-ups on Manitoulin Island, and across Canada, in order to enforce laws in ways that advanced their assimilative aims. Although this dissertation ultimately reveals Indian Affairs' distancing from localized and legislative incarceration, it closes by establishing incredible continuities of assimilation through incarceration within the broader welfare state.

The Second World War brought about a recalibration of government policies and a repositioning of "Indians" within the general social welfare programs of the state. The movement of Indian Affairs away from judicial functions and localized jails has served to obscure their participation in incarceration. Nonetheless, as this dissertation unearths through reading both material and documentary sources as geographical palimpsests, practical structural adjustments were partial, governmental functions were intermingled, and entrenched prejudices were difficult to dislodge. When the standing of enfranchised Canadians as subjects of the British Crown was translated into citizenship with the 1947 *Citizenship Act*, "Indians" did not gain equivalent rights as citizens even though they had also been subjects with, ostensibly, the same legal protections.[2] The 1951 *Indian Act* allowed greater "Indian" control of band governance, gave women the right to vote in band councils, and marked a move towards integrating children into regular school systems.[3] Indian Affairs began to publically acknowledge the possibility that First Nations identity and citizenship in Canada could coincide.[4] Although some attempts were made to improve nation-wide curriculae on Aboriginal culture, educational reforms did little to "facilitate the movement of Aboriginal people as Aboriginal people from wardship to citizenship" in the Canadian state.[5]

Citizenship has been made the "ideological rival" of indigenous persons' *sui generis* and treaty rights.[6] In 1960, "Indians" received the federal franchise without losing "status" under the *Indian Act*. Nevertheless, by the end of the decade, Minister of Indian Affairs Jean Chretien outlined the Trudeau Government's intent to fully assimilate status Indians. The 1969 *White Paper* proposed to dissolve the unique legal relationships between First Nations and the Federal

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[2] James (Sákéj) Youngblood Henderson, "*Sui Generis* and Treaty Citizenship," *Citizenship Studies,* 6(4), (2002):415-440.
[3] John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):189, 197, 211, 212, 220.
[4] Ibid:198.
[5] Ibid:198.
[6] Henderson, 2002, Op. Cit.:418.

Government by completing the integration of "Indians" into provincial service systems, repealing the *Indian Act*, and bringing an end to treaties. The *White Paper* was rejected by the majority of First Nations because, despite the inequalities in legislation governing the relationships between "Indians" and the federal government, it would also eliminate significant distinctions and duties caught up in the *Indian Act*. The legal geographies used to restrict indigenous persons for the purposes of assimilation can also be used as positions of entrenchment from which to insist on the state's legal obligations to First Nations.

Today, with its M'Chigeeng, Sheguiandah, Sheshegwaning, Aundeck Omni Kaning, Wikwemikong, and Zhiibaahaasing reserves, Manitoulin Island remains an extraordinary place. Beautiful vistas, waterways, tourist destinations, farmlands, businesses, and industries are found in both settler and First Nations communities. For a historical geographer, the presence of lock-up buildings in the landscape of Manitoulin Island is an intellectual enigma that must be decoded.

Archival research is an authoritative scholarly tool for addressing pertinent research questions:

1) How did incarceration develop historically and geographically as a peculiarly prominent element of "Indian" interactions with the Canadian state?
   a) What were the particular legal and geographic characteristics of "Indian" incarceration and how did they vary over time?
   b) What mechanisms and treatment distinguished "Indian" interactions with law enforcement, court, and correctional systems?
   c) What "place" did incarceration have on reserves?

2) How was state law applied on Manitoulin Island in the early days of European settlement?
   a) How was "crime" understood and criminal law enforced?
   b) How did the growth of European settlements and deepening of Canadian state functions influence the use of incarceration on Manitoulin Island?
   c) Why, and how, did the Department of Indian Affairs build lock-ups on Manitoulin Island? How did these facilities operate?

3) What were the impacts of changing social concerns on criminalization and the use of incarceration?
   a) How did post-Second World War societal priorities and the 1951 *Indian Act* influence carceral and assimilative processes?
   b) Has racism resulted in the elision of traits associated with indigenous ancestry with unlawfulness?

Keys to understanding this captivating landscape are found in the examination of scholarly literature and archival approaches in Chapter Two. Building on the principles of historical-geographical scholarship and legal geography, Chapter Three begins to lay a foundation

for assimilation through incarceration by interpreting early assertions of the colonial state through the legal instruments of mapping, surveying, and treaty-making. Manitoulin Island has long been a place of international summit for indigenous and colonizing nations. As an island, Manitoulin presented segregative opportunities to indigenous peoples resisting the incursions of settlers as well as to colonizing governments asserting state power over indigenous peoples through geographical containment. Through the establishment of legally reserved spaces for indigenous peoples, colonizing governments attempted to dispatch Aboriginal title in order to legitimate state claims on the frontier lands that seemed most promising for settlement and economic enterprise. As settler populations grew and spread north-west around the Great Lakes, demand increased for lands and resources that once seemed remote and undesirable.

By reconsidering the murder of a colonial official amidst the fog of legal rights to Manitoulin fisheries, Chapter Four demonstrates the tendency to validate state power through criminal law enforcement when the considered legal approaches of indigenous peoples clashed with the legal understandings of frontier businessmen and inflamed the insecurities of settlers within the colonizing state. As indigenous communities assessed advancing settlement, they strategically negotiated their relationships to colonial legal structures. However, these legal structures continually evolved according to colonial expediency. The state refined and justified its practices through legislation. Chapter Five critically assesses the entrenchment of assimilative and segregative approaches to indigenous peoples in early renderings of the *Indian Act*. Once confederated, Canada paid little attention to its reliance on indigenous allies to secure territorial advantage in European contests on the North American continent. Canada was left with what was perceived as the unfinished business of extinguishing problematic indigenous existence and power. Nevertheless, as they positioned themselves in the shifting legislative landscapes of Canada, indigenous communities maintained their own legal ontologies and continued to pay heed to the responsibilities of their own lifeways.

Attestations to indigenous strength challenged the ultimate authority of Canada. Chapter Six delves into unrests and inconsistencies of colonial Canadian frontiers as it explores assimilative criminalization on the "frontiers" of a developing Canadian state. The persistent enactment of indigenous legal principles and calls to honour agreements made with First Nations threatened state aspirations. Therefore, the legal prerogatives of indigenous peoples were paternalistically undermined and criminalized. Within its assimilative trajectory, the *Indian Act* is conceptualized as a piece of criminal legislation for the classification, control, and eventual elimination of "Indian" as a legal category. The criminalizing provisions of the *Indian Act*

defined specific "Indian" crimes and laid out procedures for the investigation, prosecution, conviction, and punishment of "Indians." Carceral terms are delineated in the *Indian Act*. Criminal codes, law enforcement, and regulatory systems drew on the *Indian Act* as the primary legislative arbiter of "Indian" relationship to the Canadian state. When "Indians" turned to colonial legal systems, the assimilative ideals of Indian Affairs could outweigh the securing of justice.

Abstinence from the consumption of intoxicating liquors was a central assimilative ideal of Indian Affairs. The difficulty of enforcing complete temperance when the very settler society that "Indians" were intended to emulate did not abstain is borne out in Chapter Seven. A legally-informed deconstruction of the "Drunken Indian" stereotype demonstrates that, while this pernicious racialization predated Confederation, it was reinforced by the assimilative criminalization of state policies. Sentences for criminal offenses involving the possession, consumption, and trade of intoxicants were legislated into the *Indian Act*. Indian Affairs' abstemious mandate was applied through their own invasive surveillant, judicial, and carceral powers over "Indians." While complete control of human agency could never be effected, assimilative coercion was written into the legal geographies of state structures and societal prejudices.

The construction of lock-ups for the imprisonment of "Indians" is a previously undiscovered and unmapped phenomenon. Chapter Eight embarks on tracing this punitive geographical restriction. In Chapter Nine, the precepts of historical-geography and legal geography are used to document and convey the multifarious connections between Manitoulin Island lock-ups and the assimilative jurisdictions of Indian Affairs. "Indian" imprisonment appeared to move geographically, legislatively, and administratively from the bureaucratic domain of Indian Affairs into the correctional systems of the welfare state following the Second World War. Chapter Ten traces the material legal geographies of three relocations exemplified by the concession of the Gore Bay Gaol's District Gaol status in favour of imprisonment in Sudbury, the enrollment of children in a residential school which had its own system of teaching the administration of justice, and the assimilative purposes and products of labour undertaken in prisons. Assimilation and incarceration have remained astonishingly close. Historical and legal geographical analysis illuminates critical state structures that remain in place today.

Relevant primary sources were found in the National Archives of Canada and the Archives of Ontario. While many of these files are available to any researcher, several voluminous files of highly sensitive documents from the Department of Indian Affairs and the

Department of Justice were obtained from the National Archives through a successful Access to Information application and researcher agreement. Newspapers and other historical publications were used as windows on popular interests, influential representations of events, and changing legal environments. Legislation was evaluated as an arbiter of legal geographic rights and restrictions. Parliamentarians' work includes improving the legislation that enshrines what is, and is not, lawful behaviour. Therefore, as well as contributing to the creation of particular legal geographies, legislative evolutions are reflections of the problems and priorities of real legal contexts. Legal disputes and decisions were used to illustrate and illuminate the differing historical-geographic circumstances in which the law is enacted.

Findings generated from the marriage of historical and legal geographies serve to support the paramount contribution of this dissertation: deliberate scrutiny of colonial legal abstraction is grounded in the form of small jails built for "Indian" inmates. The Department of Indian Affairs was thoroughly immersed in the construction and utilization of lock-ups for the incarceration of "Indians." Incarceration has a profound place in the program of assimilation through geographic segregation. The material connections between Indian Affairs and imprisonment were perpetuated even when services for "Indians" became more closely integrated with general social welfare systems following the Second World War. The current overrepresentation of Aboriginal persons in Canadian provincial and federal carceral facilities is thus much more direct than socio-economic indices resulting from historic trauma and discrimination. This dissertation demonstrates that incarceration has always been inequitably applied to "Indians."

Chapter 2

Literature Review: Theoretical and Methodological Contexts

The blossoming of academic scholarship in legal geography provides a theoretical context for this dissertation. Discourses of legal geography are practical responses to the complexity of relationships between theories of identity, such as gender, class, and racialization, with "on the ground" realities embedded in human agency, physical geography, materiality, and the semiotics of landscape. Legal and surveillant practices are critical to understanding how these realms operate and cooperate. Chris Butler locates legal geography in the theories of Henri Lefebvre's *Dialectical Materialism*, *The Right to the City*, *The Urban Revolution*, and *The Production of Space*.[1] Within the latter treatise, Lefebrve's delineation of spatial practices, representations of space, and representational spaces, in other words, "the physical, the mental and the lived," Butler finds a theoretical grounding for legal geography.[2]

Recent legal geographical work has been done in the areas of economic globalization, the politics of water, housing, terrorism, "race," political asylum, gated communities, satellites, surveillance, urban policing, spatio-therapeutics, and Canadian federalism.[3] There are many more

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[1] Chris Butler, "Critical Legal Studies and the Politics of Space," *Social & Legal Studies*, 18(3, September), (2009):313-332.
[2] Ibid:320.
[3] Joshua Barkan, "Law and the geographic analysis of economic globalization," *Progress in Human Geography*, 35(5, October), (2011): 589-607; Wendy Jepson, "Claiming Space, Claiming Water: Contested Legal Geographies of Water in South Texas," *Annals of the Association of American Geographers*, 102(3), (2012):614-631; K Maria and D Lane, "Water, Technology, and the Courtroom: Negotiating Reclamation Policy in Territorial New Mexico," *Journal of Historical Geography*, 37(3, July), (2011):300-311; Patrick Forest, "The Legal Geography of Water Exports: A Case Study of the Transboundary Municipal Water Supplies Between Stanstead (Québec) and Derby Line (Vermont)," *Québec Studies*, 42(Fall/Winter), (2002): 91-109; Peter J Atkins, M Manzurul Hassan, and Christine E Dunn, "Toxic Torts: Arsenic Poisoning in Bangladesh and the Legal Geographies of Responsibility," *Transactions of the Institute of British Geographers*, 31(3, September), (2006): 272-285; Deborah G Martin, Alexander W Scherr, and Christopher City, "Making Law, Making Place: Lawyers and the Production of Space," *Progress in Human Geography*, 34(2), (2010):175-192; Nick J Sciullo, "On the Language of (Counter)Terrorism and the Legal Geography of Terror," *Willamette Law Review*, 48(3, Spring), (2012):317-341; Benjamin Forest, "The Legal (De)construction of Geography: Race and Political Community in Supreme Court Redistricting Decisions," *Social & Cultural Geography*, 5(1, March), (2004):55-73; A White, "Geographies of Asylum, Legal Knowledge and Legal Practices," *Political Geography*, 21, (2002):1055-1073; Ron Levi, "Gated Communities in Law's Gaze: Material Forms and the Production of a Social Body in Legal Adjudication," *Law & Social Inquiry*, 34(3, Summer), (2009): 635-669; Christy Collis, "The geostationary orbit: a critical legal geography of space's most valuable real estate," *Sociological Review*, 57(May), (2009):47-65; Micheal Vonn, "CCTV and the 2010 Vancouver Games: Spatial Tactics and Political Strategies," *Case*

subjects that appear to have obvious relevance to this perspective yet have not been addressed. As Joshua Barkan comments in his analysis of economic globalization, while geographers have made significant contributions, there has been a "curious absence of law" in examinations of state restructuring.[4]

Perhaps this absence is in some way connected to Nicholas Blomley's observation that geographers have been "generally reluctant" to contemplate the violence of state law despite the "discipline's violent entanglements" and the "intrinsic and consequential geography to law's violence" found in the establishing of property through legal conceptions such as the frontier and legal instruments such as surveys.[5] As Blomley, the foremost legal geographer, holds this lens to the idea of property, useful insights are achieved into the interpretations and outcomes of property systems with British colonial origins.[6] Blomley's work thus provides a backdrop for the rough interactions between indigenous and colonial law and, critically, a balancing between the coercive potential of colonial ideologies and the porosity of real places and boundaries. Synthesizing insights and approaches from a variety of disciplines has always been a forte of geographic scholarship.

Although written as a legal academic exposition, geographic considerations have clearly been brought to bear on Douglas Harris' reconstruction of the "legal spaces" of indigenous fisheries in *Fish, Law, and Colonialism: the Legal Capture of Salmon in British Columbia.*[7] Harris' contextual archival research uses the term "law" as a descriptor of the situated networks of indigenous and state regulation.[8] In British Columbia, colonial authorities justified the imposition of state law by failing to recognize the existence of indigenous law.[9] Despite brief reference to instances where conflicts between indigenous and colonial applications of law led to

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Western Reserve Journal of International Law, 42(3), (2010):595-605; Bernd Belina, "From Disciplining to Dislocation: Area Bans in Recent Urban Policing in Germany," *European Urban and Regional Studies*, 14(4), (2007):321-336; Dawn Moore, Lisa Freeman, and Marian Krawczyk, "Spatio-Therapeutics: Drug Treatment Courts and Urban Space," *Social & Legal Studies*, 20(2), (2011):157-172; Robert Stack, "The Legal Geography of Expansion: Continental Space, Public Spheres, and Federalism in Australia and Canada," *Alberta Law Review*, 39(2), (2001):488-510.

[4] Barkan, Op. Cit.:591.

[5] Nicholas Blomley, "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers*, 93(1), (2003):121-141.

[6] Nicholas Blomley, "Simplification is Complicated: Property, Nature, and the Rivers of Law," *Environment and Planning A*, 40, (2008): 1825-1842; Nicholas Blomley, "Making Private Property: Enclosure, Common Right and Work Hedges," *Rural History*, 18(1), (2007):1-21; Nicholas Blomley, *Rights of Passage: Sidewalks and the Regulation of Public Flow*, (New York: Routledge, 2011).

[7] Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*, (Toronto: University of Toronto Press, 2001).

[8] Ibid:5-7.

[9] Ibid:4.

imprisonment, Harris primarily concentrates on British Columbia fisheries and does not make detailed connections between incarceration and assimilation on a broader scale.[10] It may be more difficult to discover the nature of these relationships within research on the somewhat removed colonial administrative contexts of British Columbia. Nevertheless, as this dissertation makes evident, these linkages exist. Even as state power operated in varying colonial contexts through particular individuals, central ideologies and policies were transmitted from colonial seats of power to the whole. It is for these reasons that assimilation through incarceration must be critically assessed on several scales.

While most geographers are by no means lawyers, law is unmistakably influential in geography. The importance of the law goes beyond legal texts to legal practice. As Deborah Martin, Alexander Scherr, and Christopher City underscore, lawyers "interpret and enact the law in socio-spatial contexts that can reinforce or alter spatial norms."[11] Reginald Oh dissects the implication of the 1989 United States Supreme Court contention in *Richmond v. Croson* that "African Americans were now politically powerful because of and not in spite of having historically suffered from invidious racial discrimination."[12] Oh uses this "profoundly inaccurate" assumption to argue for the "importance of examining space and geography in critiquing and constructing legal doctrine."[13] Bernd Belina maintains a critical perspective in an analysis of the relationships between geographic imagination and Aufenthaltsverbote, a German method of policing through "area bans."[14] When "spatializations of crime," perceptions of criminal danger associated with place, are made into law, their "structuring impact on police work and the urban fabric are intensified."[15] The central role of law in geographic ontologies animates the systematic analytical approach of legal geographic scholarship.

2.1 Incarceration: Surveillance, Segregation, and Racism

Weighty scholarship on segregation, racism, and incarceration has been pursued in both the USA and Canada; however, much of this work is either in the contemporary vein, does not consider indigenous peoples, or makes theoretical rather than empirical allusions to historical-

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[10] Douglas Harris, 2001, Op. Cit.:51-54, 111-113, 197.
[11] Martin et. al., 2010, Op. Cit.:175.
[12] Reginald Oh, "Re-mapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action," *American University Law Review*, 53(6, August), (2004):1307.
[13]Ibid:1308.
[14] Belina, 2007, Op. Cit.:321.
[15] Ibid:322.

geographical contexts. Polemic works can be too hazy about the specific, geographically-grounded, application of the law to support confident connections between the present and the past. Constance Backhouse, Ann Curthoys, Ian Duncanson, and Ann Parsonson champion the perspective that

> [h]istorical societies were not monolithic in respect of the attitude to race; they were not unrelievedly smothered by ideas of racial hierarchy…We know too little yet about the historical record of race to make sweeping generalizations about what was known or understood, and what could have been known or understood, about the evils of white supremacy. So why the hesitation to use words such as 'racist' or 'anti-racist' in recounting historical times? There somehow seems to be less resistance to using the label 'sexist' to describe historical actors, even though this is also a modern addition to our vocabulary.[16]

Diana Paton does not hesitate to use these terms as she situates the particularities of Jamaican penal approaches within the colonial drive to incarcerate.[17]

In Canada, historical mentions of imprisonment and indigenous peoples tend to be incidental to narratives of important historical figures or events such as Louis Riel and the conflicts on western colonial frontiers. Andrew Graybill's *Policing the Great Plains: Rangers, Mounties, and the North American Frontier* is an example of a frontier history of law enforcement of indigenous peoples and borders.[18] Graybill contrasts the "exterminating or expelling" tactics of Texas Rangers with those of the North-West Mounted Police (NWMP) who "sought to subdue" indigenous peoples through "implementing Ottawa's policy of coerced assimilation."[19] The NWMP were "well positioned" for the task at hand because "Ottawa had invested the constabulary with the power to arrest, prosecute, judge, and sentence offenders."[20] Amanda Nettelbeck and Russell Smandych make similar claims as they turn to comparative study to evaluate the effectiveness of colonial law in legally protecting indigenous peoples as subjects of the British crown.[21] Mounted police were deployed on both the Canadian and Australian

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[16] Constance Backhouse, Ann Curthoys, Ian Duncanson, and Ann Parsonson, "'Race', Gender and Nation in History and Law," *Law, History, Colonialism: The Reach of Empire*, Eds. Diane Kirkby and Catherine Coleborne, (Vancouver: University of British Columbia Press, 2001):280.
[17] Diana Paton, *No Bond But the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870*, (Durham: Duke University Press, 2004).
[18] Andrew R Graybill, *Policing the Great Plains: Rangers, Mounties, and the North American Frontier*, (Lincoln: University of Nebraska Press, 2007).
[19] Ibid:51.
[20] Ibid.
[21] Amanda Nettelbeck and Russell Smandych, "Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police," *Australian & New Zealand Journal of Criminology*, 43(2, August), (2010):356-375.

frontiers to "facilitate Indigenous people's subjugation to colonial law."[22] Colonialist ideals of legal protection emanating from the centre of the British Empire were "compromised" by directives to "ensure the negation of Indigenous sovereignty, and to implement effective policies of containment and surveillance."[23] With these powers, the NWMP has been likened to its own government.[24] Such analogies may serve to negate the historical delegation of these powers by the assimilating government. In chronicling the way in which Indian Agents administered a pass system to restrict indigenous persons to reserves and instructed that the vagrancy provisions of the *Criminal Code* be used to remove indigenous persons from towns, even though police were "steadily more uncomfortable with the task of restricting Amerindian movements," Olive Patricia Dickason adeptly places the origins of these assimilative responsibilities within the truly wide-reaching governance of Indian Affairs.[25]

A theoretical strand of "carceral geography" lies in what Chris Philo terms "geographical security studies."[26] Critical geographical theorist Derek Gregory identifies a "global war prison" with fast-moving borders.[27] Philo describes these carceral geographies as "alighting on the spaces set aside for 'securing' – detaining, locking up/away – problematic populations of one kind or another."[28] Only a small portion of these carceral geographic studies are concerned with prisons in the conventional institutional sense. From the theoretical antecedent of Foucault, Philo and other geographers cast more widely to carceral geographies of the asylum.[29] If, as Philo contends, geographies of "'unreasonable' denizens" functioned to keep inmates in rather than to keep the rest out, they are rather different from legal historical geographies of "Indians" within colonial Canada where the ideological standards of "civilization" were so fastidious that most settlers did not qualify and were thus viewed askance by Indian Affairs whenever they ventured too close to segregated indigenous populations.[30] While transfiguring "Indians" into "white" settler society was the professed goal of Indian Affairs, the realities of frontier settlement in colonial Canada

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[22] Nettelbeck and Smandych, 2010, Op. Cit.:357.
[23] Ibid:357.
[24] Ibid:360.
[25] Olive Patricia Dickason, *Canada's First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):293.
[26] Chris Philo, "Boundary Crossings: Security of Geography/Geography of Security," *Transactions of the Institute of British Geographers*, 37(1), (2012):1-7.
[27] Derek Gregory, "The Everywhere War," *The Geographical Journal*, 177(3, September), (2011):238-250; Derek Gregory, "War and Peace," *Transactions of the Institute of British Geographers*, 35(2, April), (2010):154-186.
[28] Chris Philo, 2012, Op. Cit.:4.
[29] Ibid.
[30] Ibid.

were less than satisfactory. For the paternalistic Department of Indian Affairs, an "actual" settler might be likened to an over-familiar older suitor who could lead an impressionable youngster, quite literally, astray.

David Sibley and Bettina van Hoven observe that the "limited engagement of geographers with prison spaces only reflects a broader problem" of privileging Foucauldian theories over empirical research.[31] The dearth of empirical research is due in part to the difficulty of gaining productive ethical access to prison spaces as researchers.[32] The implementation of Julie Abril's research program in the Ohio Reformatory for Women in Marysville offers a glimpse of the problematic potential of research involving imprisoned persons. In response to a Native American Identity Questionnaire, in excess of forty percent of respondents identified themselves as at least partially of Native American origins.[33] Despite the prison's estimation that there were only two Native American prisoners, from the over one-third of total prison population sample, 255 women reported Native American heritage.[34] In the Ohio prison study, the warden publicized and requested prisoner participation in the study.[35] The prison staff distributed the questionnaire, helped inmates fill it out, collected completed questionnaires, and took responsibility for referring inmates to counseling if it was needed as a result of the study.[36] Research conducted in the style of this questionnaire could easily become skewed, harmful, or exploitative. Moreover, although it could produce data on current overrepresentation in circumstances where institutional numbers are dubious, it would not assist in tracing the much deeper historical-geographical roots of assimilation through incarceration.

Sibley and van Hoven employ surveys and in-depth interviews in the interests of exploring spatialities and interactions amongst inmates in a New Mexico prison, rather than any absolute authoritative power of the prison structure.[37] Although one set of relations cannot be completely disentangled from the other, they take this approach in order to demonstrate that "there are other things going on" in the production of carceral spaces.[38] For Sibley and van Hoven, flaws lie in Foucauldian ideas of the internalization of disciplining surveillant power

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[31] David Sibley and Bettina van Hoven, "The Contamination of Personal Space: Boundary Construction in a Prison Environment," *Area*, 41(2), (2009):198.
[32] Ibid:198-199.
[33] Julie C Abril, "Native American Identities Among Women Prisoners," *The Prison Journal*, 83(1, March), (2003):38.
[34] Ibid:43-44.
[35] Ibid:41-42.
[36] Ibid:41.
[37] Sibley and van Hoven, 2009, Op. Cit.:198-206.
[38] Ibid:199.

because "space within the prison is both transparent and opaque" and the degree to which Bentham's panoptic self-discipline is effected is shaped by factors including personality, length of sentence, and social networks outside of the prison.[39] Furthermore, there is a considerable difference between the outward appearance of conformity to power and the persevering internal power of human agency.[40] Imprisoned persons are not just under surveillance: they also surveil each other as exemplified by Sibley and van Hoven's story of a "Native American prisoner, who…said that he spent much of his day" watching "others as a means of deciding who to avoid."[41] Like Sibley and van Hoven's efforts to articulate what is going on in carceral spaces, this dissertation's engagement with archival, government, and legislative sources is a determined effort to conduct empirical geographic research on the grounded operations of carceral power.

Jared Sexton and Elizabeth Lee find two conceptual "failures" in the concentration of scholarly attention on imprisonment within the politicized discourses surrounding warfare and Abu Ghraib.[42] When academic interest becomes preoccupied with torture, it generates a "reification of the prison that both relies upon and displaces its racialization as an institution of black spatial containment and social control."[43] Sexton and Lee offer a critical reminder that, in addition to what occurs once persons are in prisons, the processes and structures that allow imprisonment must be examined. Despite its immediate relevance, African-American overrepresentation in prisons is not a new phenomenon. Sexton and Lee assert that the "profound continuity of black captivity across the entire history of the United States indicates… its status as what we might call pre-political, a condition of gratuitous (and not only instrumental) violence that founds the very order of the political."[44] Since carceral control is interwoven in the foundations of the state, attempts at redress might be viewed as striking at the very heart of state power. Although its origins have heretofore been absent from the academic literature, this dissertation makes evident that another profound continuity is found in the imprisonment of indigenous persons in Canada.

Politically, scholarly analysis of racialization and imprisonment in the USA have conveniently overshadowed Canada's own carceral historical geographies. Literature on racialization and overrepresentation in prisons in the USA is not an adequate substitute for

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[39] Sibley and van Hoven, 2009, Op. Cit.:199.
[40] Ibid:200.
[41] Ibid:202.
[42] Jared Sexton and Elizabeth Lee, "Figuring the Prison: Prerequisites of Torture at Abu Ghraib," *Antipode*, 38(5, November), (2006):1005-1022.
[43] Ibid:1006.
[44] Ibid:1013.

scholarship on Canada.[45] A certain moral superiority is oft lent Canada in actions such as the 1890s barring of the importation of Alabama and Tennessee pig iron by Canada Customs because some of it was produced by prison labour.[46] Similarly, Marie Gottschalk's discussion of the death penalty demonstrates little awareness of racialization in Canada. Indeed, there is little historical scholarship on the issue to inform this literature that it is inaccurate to presume that Canada was "more at liberty to focus single-mindedly on the deterrence issues and make that a central feature of the national debate because they did not have to contend with claims about how the death penalty was imposed in a racially discriminatory manner."[47] Gottschalk contends that the death penalty was abolished by Canada's political elites in 1967 "despite strong public support for it."[48] Part of the answer for why Canadian political figures abolished the death penalty may be found in the systematic generalization of the state's social welfare focus following the Second World War. As this dissertation demonstrates, ideologies of paternalistic guardianship and incarceration are bedfellows of Canadian historical-geography.

2.2 The Overrepresentation of Aboriginal Persons in Prisons

Chris Andersen asserts that the criminal justice system is where the Federal Government's "failure" of Aboriginal persons is most apparent.[49] According to 2006 Census and 2007/2008 Integrated Correctional Services Survey data, relative to the general population, Aboriginal persons are overrepresented in correctional facilities in every Canadian province and territory.[50] In 2006, 3.1% of adults in Canada self-identified as Aboriginal. According to 2007/2008 Correctional Service data, self-identified Aboriginal adults comprised 17% of admissions to remand, 18% of admissions to provincial and territorial custody, 16% of

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[45] See Appendix A.
[46] Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*, (New York: Verso, 1996):94.
[47] Marie Gottschalk, *The Prison and the Gallows: the Politics of Mass Incarceration in America*, (New York: Cambridge University Press, 2006):229.
[48] Ibid:227-229, 301.
[49] Chris Andersen, "Governing Aboriginal Justice in Canada: Constructing Responsible Individuals and Communities through 'Tradition,'" *Crime, Law & Social Change*, 31, (1999):303-326; Chris Andersen, "Aboriginal Gangs as a Distinctive Form of Urban Indigeneity," Paper presented at the Annual Meeting of the Association of Canadian Geographers, 76th Congress of the Humanities and Social Sciences, Saskatoon, Saskatchewan, 30 May 2007.
[50] The subsequent statistical sketch is based on the following two sources: Samuel Perrault, "The Incarceration of Aboriginal People in Adult Correctional Services," *Juristat*, Statistics Canada, 85-002-X, 29(3, July), (2009); Office of the Correctional Investigator, "Backgrounder: Aboriginal Inmates," 2 February 2010, << http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20052006info-eng.aspx >>

admissions to probation, and 19% of admissions to conditional sentences. The Census respondents self-identify with at least one Aboriginal group based on a definition of "Aboriginal" as North American Indian, Métis, or Inuit. The Correctional Service follows a classificatory system where every inmate may be categorized as Non-Status Indian, North American Indian, Métis, Inuit, Non-Aboriginal, or Aboriginal-Status Unknown. Of the Aboriginal persons incarcerated at the time of the 2006 Census, approximately 68% were identified as First Nations, 28% as Métis, and 4% as Inuit.

Although overall admissions to sentenced custody have declined for both Aboriginal and non-Aboriginal adults, decreases have been proportionately less for Aboriginal persons. Therefore, as a proportion of the whole, the overrepresentation of Aboriginal persons in prisons is increasing. Female inmates make up a relatively small proportion of the correctional system; however, Aboriginal females comprise a larger segment of the female correctional population than Aboriginal males do within the male correctional population. While Aboriginal persons are overrepresented in corrections in all provinces, there is a distinctive geographical distribution to this inequality.

Province or Territory	Remand	Provincial or Territorial Sentenced Custody[1]	Probation	Conditional Sentence	Adult General Population[2]
Newfoundland and Labrador	23%	21%		23%	4%
Prince Edward Island	6%	1%			1%
Nova Scotia	9%	7%	5%	7%	2%
New Brunswick	9%	8%	8%	11%	2%
Québec	4%	2%	6%	5%	1%
Ontario	9%	9%	9%	12%	2%
Manitoba	66%	69%	56%	45%	12%
Saskatchewan	80%	81%	70%	75%	11%
Alberta	36%	35%	24%	16%	5%
British Columbia	20%	21%	19%	17%	4%
Yukon	78%	76%	66%	62%	22%
Northwest Territories	85%	86%			45%
Nunavut			97%	97%	78%

Figure 2: Percentage of Total Aboriginal Correctional Admissions Per Category[51]

The percentages of self-identified Aboriginal admissions to the correctional system is high in all provinces and territories; however, when organized according to jurisdiction and offence, it becomes apparent that, even within shared inequality, there are distinct geographical variations.

[51] Table adapted from Perrault, 2009, Op. Cit.. 1: Includes intermittent sentences. 2: Proportion is based on data from the 2006 Census. Original Source: Statistics Canada, Canadian Centre for Justice Statistics, Adult Correctional Services Survey, Integrated Correctional Services Survey, and 2006 Census of Population.

Scholars continue to inquire into the characteristics of, and possible solutions for, the staggeringly imbalanced incarceration of Aboriginal peoples. Patricia Monture and Carol LaPrairie make great strides in examining the contemporary overrepresentation of Aboriginal persons in Canadian prisons.[52] LaPrairie estimates that high rates of Aboriginal imprisonment have raised public awareness of the sheer preponderance of prison sentences given by the Canadian Criminal Justice System.[53] The brevity of most sentences does not alleviate Canada's "high dependence on prison-based sentences."[54] Monture makes a meaningful argument that

> prison does impact on Aboriginal peoples generally in a much more profound way tha[n] principles such as deterrence take account...how important it is to account for the colonial impact and the way historical events reproduce present day devastations on Aboriginal peoples. Colonialism has created the climate of distrust where Aboriginal people see this is not a system of justice, which equally represents them.[55]

Monture and LaPrairie's thoughtful scholarship forms an estimable foundation upon which much more work might be done.

2.3 Restoring Justice: History, Geography, and Canada's Indigenous Legal Futures

While many indigenous peoples maintain that an inherent right to the self-determination of justice systems is "not dependent upon, granted, or given by any external source," many lines of resistance look to the rights found in current Canadian and international laws or charters.[56] Part of the intransigence of the Canadian legal system is that, even when recognizing indigenous principles, it "treats them as discoverable facts that are, moreover, frozen in time, rather than as... evolutive systems of law produced by legal orders dating from pre-colonial times but still in force."[57] It can appear that, from the state's perspective, there is little "proof" either that these are indeed evolutive systems of law or that historical state approaches to indigenous peoples pre-date Confederation and are still effectual today.

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[52] Patricia Monture-Angus, "Confronting Power: Aboriginal Women and Justice Reform," *Canada Woman Studies*, 25(3,4), (2006):25-33.
[53] Carol LaPrairie, "Aboriginal Peoples and the Canadian Criminal Justice System," *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005):239.
[54] Ibid:239.
[55] Patricia Monture-Angus, "The Lived Experience of Discrimination: Aboriginal Women Who Are Federally Sentenced," The Elizabeth Fry Society, 2002.
[56] Ted Palys and Wenona Victor, "'Getting to a Better Place': Qwi:qwelstóm, the Stó:lō, and Self-Determination,'" *Indigenous Legal Traditions*, Ed. The Law Commission of Canada, (Vancouver: University of British Columbia Press, 2007):12-39.
[57] Andrée Lajoie, "Introduction: Which Way Out of Colonialism?" *Indigenous Legal Traditions*, (Vancouver: University of British Columbia Press, 2007):5.

Mark Walters' detailed legal histories give credence to the argument that contemporary "legal constructions of the initial contact between the common law and Aboriginal customary law must incorporate native and non-native legal and historical methodologies, a reconciliation that courts are only just beginning to attempt" through cases such as the Supreme Court's controversial 1997 *Delgamuukw v. British Columbia* decision.[58] Walters attests to the ability of common law to communicate with indigenous legal epistemologies on the basis of a shared "system of normative reasoning" regarding history: Western historical scholarship has

> tended to assume that relatively objective and linear historical realities can be identified through interpretations of written records in which the historian attempts to keep his or her own cultural and historical perspective at a distance and to produce interpretations of history relevant to that particular cultural and historical position. In contrast, Aboriginal conceptions of history are informed by oral traditions that are generally non-linear, and the goal is not to seek an objective truth detached from the present but to tell a story of the past in which the assumptions and aspirations of the teller and the listeners are more of an integral part. At least in relation to legal history, common-law reasoning tends to resemble the native rather than the non-native conception of history.[59]

Judges' interpretations of common law mine historical legal narratives for "rules and principles that have moral resonance and therefore normative force" for the particular individuals and communities involved in each case.[60]

Despite their disparities, ontological resonances exist between settler and indigenous legal understandings. Sympathetic historical accounts have tended to list between the dichotomous shores of two unintelligible spheres of law and ignore similarities between systems of order, situations that would have been unjust or illegal even from a solely settler framework, and the rapid study that indigenous peoples made of settler legal systems as they fought to survive within the unequal application of state law. It is important to recognize that the individuals who applied settler laws on indigenous lands and peoples were also attempting to keep themselves afloat on the torrential rivers of colonial state formation. Although their privileged aggregations of state powers made them formidable gatekeepers of state law, frontier businessmen lacked deeper indigenous understandings of place. Frontier officials faced the true peril of their exalted positions when they made the grave error of dismissing the power and knowledge of indigenous persons. Although there are compelling reasons to build a new framework for indigenous legal

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[58] Mark D Walters, "Towards a 'Taxonomy' for the Common Law: Legal History and the Recognition of Aboriginal Customary Law," *Law, History, Colonialism: The Reach of Empire*, Eds. Diane Kirkby and Catherine Coleborne, (Vancouver: University of British Columbia Press, 2001):125; *Delgamuukw v. British Columbia*, (1997), 3 SCR 1010; Kirsten Manley-Casimir, "Creating Space for Indigenous Storytelling in Courts," *Canadian Journal of Law and Society*, 27(2), (2012):231-247.
[59] Walters, 2001, Op. Cit.:125.
[60] Ibid:126.

relationships with the Canadian state, there are also valid reasons that indigenous peoples should have the empirical evidence to "demonstrate that even in terms of 'settler' law, as it ought to have been applied, their ancestors had certain legal rights and that the historical denial of these rights by officials was unlawful."[61] Scholars of indigenous legal histories who do not profess indigenous identities nevertheless have a great deal to contribute in redressing false assumptions about Canada's legal past.[62] The object of this dissertation is to empirically excavate heretofore submerged aspects of state legal relationships with indigenous peoples.

Contemporary programs aimed at understanding and reducing the overrepresentation of Aboriginal persons in Canadian penal systems have a particular provenance. Carol LaPrairie's seminal research on indigenous persons and the Criminal Justice System follows the development of Aboriginal justice initiatives into more formal Aboriginal organizations.[63] While Australia and New Zealand have undertaken similar reforms, Canada is distinct in this area because Aboriginal communities, organizations, and agencies are driving this change from outside the system.[64] The American Indian Movement was born in 1968 as activists laboured to secure indigenous religious ceremonies for Aboriginal persons within prisons.[65] The Correctional Service of Canada incorporates, and evaluates, Aboriginal justice initiatives within their system and are striving to integrate those aspects that appear most successful into the goals of their "Strategic Plan for Aboriginal Corrections."[66] Indigenous relationships with the penal system are represented in the hybrid model of the "Corrections Continuum of Care."

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[61] Walters, 2001, Op. Cit.:138.
[62] Ibid:138.
[63] Carol LaPrairie, "Aboriginal over-Representation in the Criminal Justice System: A Tale of Nine Cities," *Canadian Journal of Criminology,* (2002):181-208; LaPrairie, 2005, Op. Cit.:236-45; Carol LaPrairie, "Community Justice or Just Communities? Aboriginal Communities in Search of Justice," *Canadian Journal of Criminology*, 37(October), (1995):521-545; Carol LaPrairie, "The Impact of Aboriginal Justice Research on Policy: A Marginal Past and an Even More Uncertain Future," *Canadian Journal of Criminology* (1999):249-60; Carol LaPrairie, "Native Women and Crime: A Theoretical Model." *The Canadian Journal of Native Studies,* VII(1), (1987):121-37; Carol LaPrairie and Eddie Diamond, "Who Owns the Problem? Crime and Disorder in James Bay Cree Communities," *Canadian Journal of Criminology,* (1992):417-34; James Bonta, Carol LaPrairie, and Suzanne Wallace-Capretta, "Risk Prediction and Re-Offending: Aboriginal and Non-Aboriginal Offenders," *Canadian Journal of Criminology,* 39(2), (1997):127-44.
[64] LaPrairie, 2005, Op. Cit.:236.
[65] Dickason, 2002, Op. Cit.:377.
[66] Correctional Service Canada Aboriginal Initiatives Directorate, "Strategic Plan for Aboriginal Corrections: Innovation, Learning & Adjustment 2006-07 to 2010-11," Government of Canada, (2006-2011):1-22.

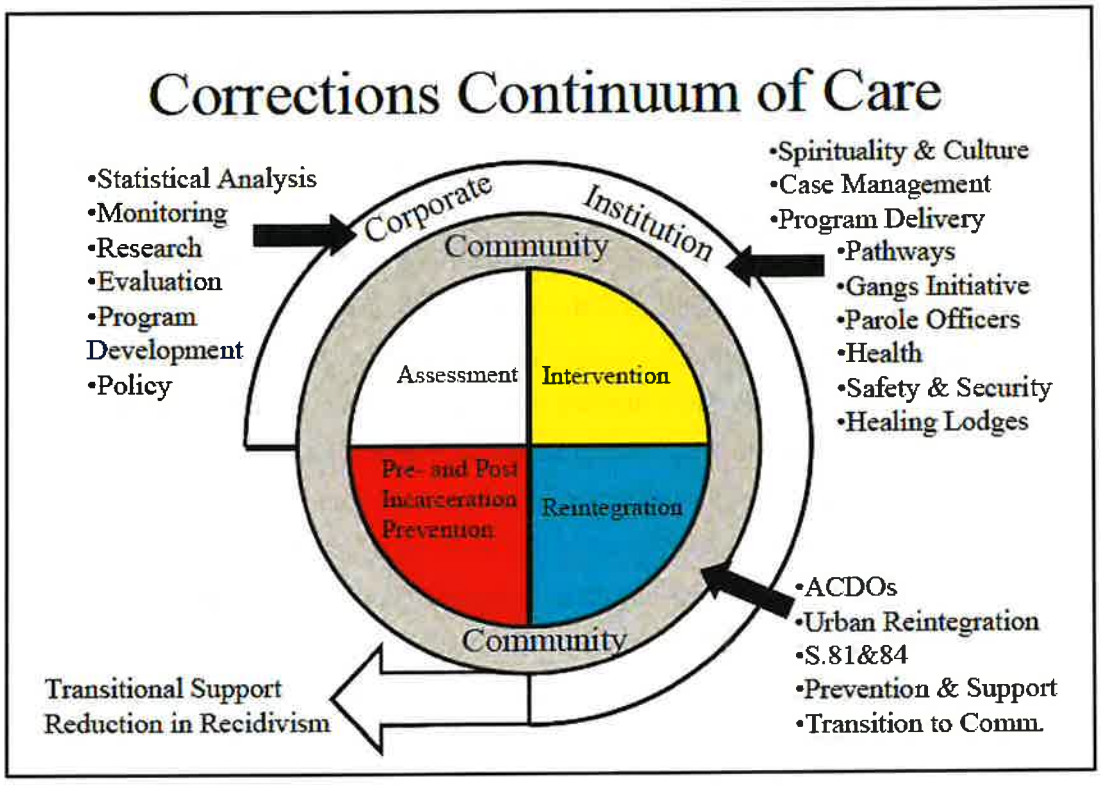

Figure 3: Correctional Service Canada's Incorporation of Indigenous Ontologies[67]
The Correctional Service's programs attempts to reconcile indigenous ontologies with institutional prerogatives.

Cultural approaches to prison reform predominate because one of the more immediate explanations for overrepresentation has been that discrimination experienced in the contemporary criminal justice system was instigated by conflicting cultures and one of the earliest principles of Aboriginal correctional programs was that rehabilitation is more likely to be successful if indigenous inmates receive culturally-appropriate programming.[68] Cultural explanations can devolve into an "underlying assumption that the problem lies with the limitations of Aboriginal culture to adapt to non-Aboriginal legal culture – an assumption of inferiority."[69] Sociological and criminological approaches to this issue struggle with the question of whether it is essential

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[67] Sections 81 and 84 of the 1992 *Corrections and Conditional Release Act* (CCRA) enable the Correctional Service to formulate agreements for the incorporation of convicted individuals into First Nations communities. Aboriginal Community Development Officers (ACDOs) collaborate with communities to create plans for reintegration. Adapted from Correctional Service Canada Aboriginal Initiatives Directorate, 2006-2011, Op. Cit.:9.

[68] Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, (Ottawa: Minister of Supply and Services Canada, 1996):40; LaPrairie, 2005, Op. Cit.:238-239.

[69] *Bridging the Cultural Divide,* 1996, Op. Cit.:41.

that Aboriginal persons receive entirely different forms of justice or "whether local justice can support the development of democratic institutions and an active citizenry, and not become a meaningless symbol of local control or, worse still, a coercive tool of repression for the powerful."[70] Insidious prejudices that substitute "culture" for the less palatable term "race" are never far from this debate.

The most widely-known early organized Aboriginal justice initiative, the national Native Courtworkers Program established in the mid-nineteen seventies, was inspired by the belief that indigenous peoples are subjected to many disadvantaging dynamics within the Criminal Justice System.[71] A decade later, while attention was brought to Aboriginal constitutional issues and customary law, efforts to bring Aboriginal perspectives to criminal justice concentrated on "Indigenizing" structures through actions such as attaching an Aboriginal arm to the Royal Canadian Mounted Police.[72] More recent initiatives, influenced by larger philosophies of self-determination, propose to take indigenous justice outside of state institutions.

For Ken Coates and William Morrison, the existence of special programs for arrested or convicted Aboriginal persons, despite their awkward relationships with legal and correctional systems, is evidence that the problem is so extreme that even the most conservative members of these systems are looking for a solution.[73] Numerous additions have been made to Canadian justice systems in attempts to ameliorate evident imbalances involving indigenous peoples. The Department of Justice's Aboriginal Justice Initiative began in parallel to the Royal Commission on Aboriginal Peoples (RCAP) in 1991 and was formalized into the Aboriginal Justice Strategy in 1996 as the findings of the Royal Commission were released.[74] RCAP engaged more inquiries, reports, and conferences on Aboriginal peoples and the justice system than any other arena in their purview; however, these tended to concentrate on "current realities" rather than specific historical foundations of injustice.[75] *Aboriginal Peoples and the Justice System* is an important

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[70] LaPrairie, 2005, Op. Cit.:244.
[71] Ibid:237.
[72] Ibid:238.
[73] KS Coates and WR Morrison, "A Drunken Impulse: Aboriginal Justice Confronts Canadian Law," *The Western Historical Quarterly*, 27(4, Winter), (1996):452; CBC Radio, "Ontario Today – Native Matrimonial Rights," Host Rita Celli, Aired Friday 29 September 2006; Melissa S Williams, "Criminal Justice, Democratic Fairness, and Cultural Pluralism: The Case of Aboriginal Peoples in Canada," *Buffalo Criminal Law Review,* 5(45), (2002):465; LaPrairie, 2005, Op. Cit.:237-238.
[74] Department of Justice, "The Aboriginal Justice Strategy," 8 August 2012, <<http://www.justice.gc.ca/eng/pi/ajs-sja/index.html >>
[75] *Bridging the Cultural Divide*, 1996, Op. Cit.:26.

compendium of indigenous initiatives in light of these realities.[76] The Royal Commission's 1996 publication of a volume entitled *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* was a significant step in identifying inequalities and establishing the principle of community justice programs for Aboriginal peoples.[77] A major conclusion of the Royal Commission was that the justice system had failed, and continued to fail, Aboriginal peoples despite all of the Commission's efforts.[78] RCAP also championed "the rule of law...as a fundamental guiding principle" of indigenous societies.[79]

Indigenous law is not, however, given to the secular abstraction of codified texts.[80] In many indigenous societies, law is "grounded in instructions from the Creator or, alternatively, a body of basic principles embedded in the natural order."[81] Law is a guiding tool of responsibilities to each other and to the earth to which indigenous peoples belong. RCAP repudiates over-confidence in colonial systems of written law to the denigration of laws transmitted through oral tradition and practice. The Royal Commission makes the point that "even in mainstream society, few individuals are familiar with more than a small portion of written law; in practice, ordinary people conduct their lives in accordance to what amounts to a living customary system."[82] The Haudenosaunee explain that the indigenous form of law that is best recognized for its written form, the *Kaianerekowa*, or Great Law of Peace, is nevertheless "essentially a law based on the mind and can be discerned only through oral teachings."[83] Like any body of law, indigenous laws are steadfast in tradition even as they grown and evolve in changing contexts.

Taiaiake Alfred explains injustice as "dysfunction" and indigenous justice as a holistic "perpetual process of maintaining that crucial balance and demonstrating true respect for the power and dignity of each part of the circle of interdependency."[84] Indigenous conceptions of law differ from Western law in that they are not primarily fixed on ideals of equity of treatment or

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[76] Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System*, (Ottawa: Minister of Supply and Services Canada, 1993).
[77] *Bridging the Cultural Divide*, 1996, Op. Cit.
[78] Ibid:26-27.
[79] Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples.* Volume II: Restructuring the Relationship, Part I, (Ottawa: Minister of Supply Band Services Canada, 1996):119.
[80] Ibid:119-120.
[81] Ibid:120.
[82] Ibid.
[83] Ibid.
[84] Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, (Toronto: Oxford University Press, 1999):42.

distribution, there is no universalizing principle of practice to limit freedoms, and both human and non-human frameworks are used to determine the appropriate use of power.[85] Jo-ann Archibald describes these principles in action through the First Nations Advisory Committee of the Law Courts Education Society of British Columbia's collaboration with indigenous storytellers to establish the First Nations Journeys of Justice provincial elementary school curriculum on indigenous principles of justice.[86] A major challenge of the First Nations Journeys of Justice curriculum was to articulate common bridging principles between internal indigenous holistic ontologies and the Canadian legal system.[87]

Sentencing circles, recommended in *R. v. Moses* in 1992, are one of the restorative justice models in operation across Canada.[88] Nonetheless, caustic skepticism is a feature of many media commentaries on restorative justice. Jonathan Kay's *National Post* opinion piece disparages the "lethal folly of a government mindset focused more on preserving aboriginal cultures than saving aboriginal lives."[89] At issue are the horrific deaths of a one-year-old and a three-year-old. The small children passed away after their father took them outside, and then blacked out, on the Yellow Quill, Saskatchewan, Reserve that Kay describes as a "geographically remote, economically destitute, politically dysfunctional, booze-addled 120-family hamlet…an archetypal den of government-bankrolled Indian misery; the sort of place that would mercifully fold up shop within a matter of days if its residents were white."[90] Kay locates the origins of the sentencing circle in the 1990s when governments and academics "began blaming high rates of native criminality on a 'white' criminal justice system that alienates natives with its focus on Western abstractions such as 'justice,' 'guilt' and 'punishment.'"[91] There is scant literature to demonstrate the deep material legal historical-geographies of current disjunctures between indigenous communities and the criminal justice system to persons who will not accept indigenous sources. The autonomous wealth and resilience of indigenous principles of law must also be recognized;

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[85] Alfred, 1999, Op. Cit.:42.
[86] Jo-ann Archibald, *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit*, (Toronto: University of British Columbia Press, 2008):101-127.
[87] Ibid:105-107.
[88] *R. v. Moses* (1992), 71 CCC (3rd) 347 at 356 (Yukon Territorial Court); Barbara Tomporowski, Manon Buck, Catherine Bargen, and Valarie Binder, "Reflections on the Past, Present, and Future of Restorative Justice in Canada," *Alberta Law Review*, 48(4, May), (2011):814-819; Emma Cunliffe and Angela Cameron, "Writing the Circle: Judicially Convened Sentencing Circles and the Textual Organization of Criminal Justice," *Canadian Journal of Women & the Law*, 19(1), (2007):17.
[89] Jonathan Kay, "The Folly of Native Sentencing Circles," *National Post*, 29 January 2009; Kevin Libin, "Sentencing Circles For Aboriginals: Good Justice?" *National Post*, 27 February 2009.
[90] Kay, 2009, Op. Cit.
[91] Ibid.

however, the legal geographical examination of this dissertation supports the assertion of indigenous legal knowledge and provides detailed evidence of the origins and intentional development of imprisonment as a tool of assimilation.

Bill C-41, the 1996 *Sentencing Reform Act*, added Section 718.2(e) to the *Criminal Code* and directed that all alternative sanctions to imprisonment should be considered when sentencing Aboriginal offenders.[92] In *R. v. Gladue*, a landmark interpretation of Section 718.2(e), the Supreme Court explained that the section is a purposeful response to the overrepresentation of Aboriginal persons in prisons: the provision

> is not simply a codification of existing jurisprudence. It is remedial in nature and is designed to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. There is a judicial duty to give the provision's remedial purpose real force.[93]

The original decision held that a suspended or conditional sentence of imprisonment was not appropriate in this case where a teenager pled guilty to stabbing her common-law husband. The judge "noted that there were no special circumstances arising from the aboriginal status of the accused and the victim" because they were "living in an urban area off-reserve" and, therefore, in his opinion were not "'within the aboriginal community as such.'"[94] The Supreme Court's decision on *Gladue* instructed judges to give due weight to the distinctive "systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts" and the "types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection."[95] The burden of gleaning knowledge of the specific circumstances of each accused offender is borne by the presiding judge.[96]

From the critical perspective of Renée Pelletier, the *Gladue* decision's nuanced handling of diverse indigenous cultures, fragmented colonial experiences, and structural inequalities is somewhat blunted by the apparent setting aside of unspecified "serious" offences from this reform and reticence in explaining what the mitigating factors might be.[97] However, the decision does not explicitly exempt serious offences. On the contrary, the Court's recognition that it is "unreasonable to assume that aboriginal peoples do not believe in the importance of traditional

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[92] Renée Pelletier, "The Nullification of Section 718.2(e): Aggravating Aboriginal Over-Representation in Canadian Prisons, *Osgoode Hall Law Journal*, (2,3), (2001):470, 473-474.
[93] *R. v. Gladue*, 1999, 1 SCR 688
[94] Ibid.
[95] Ibid.
[96] Ibid.
[97] Ibid; Pelletier, 2001, Op. Cit.:473-4, 479-81.

sentencing goals such as deterrence, denunciation, and separation, where warranted" and that it is within this "context, generally" that the "more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders" could be seen as a respectful approach to strong principles of indigenous law.[98]

Pelletier's concern that the Court focused on each offender's "connection to the community and culture" and did not consider the Aboriginal offender who has "been unable to participate in his or her culture" is validated by studies of rehabilitative programming.[99] The realities of colonialist alienation from indigenous identities do not fit comfortably with this aspect of the *Gladue* decision. For example, during the implementation of the first family violence program instituted for indigenous men in North America at the Ma Mawi Wi Chi Itata Centre in the Stony Mountain Institution of Manitoba, numerous "offenders" disclosed that they were afforded their "first opportunity in their lives to explore and understand their aboriginal heritage" through the prison program.[100]

The Supreme Court's decision may be in danger of perpetuating restrictive notions of the evolving and diverse spectrum of indigenous identities. *Gladue* may be accused of ignoring bizarrely-classified "non-traditional" concerns that affect the evolving lives of indigenous women such as domestic violence and the unequal application of matrimonial division of property on reserves.[101] Faizal Mirza warns of a further hazard that mandatory sentencing increases the "gatekeeping" role of police and could cause harm because of the "prevalence of racist policing and improper use of prosecutorial discretion."[102] Neither specificity nor judicial leeway have a comfortable place in a system that at its best strains to avoid the perpetuation of historical injustices that are built into its very bones.

Although Canadian Courts and Correctional Service Canada have instituted changes aimed at ameliorating the sentencing of Aboriginal persons to imprisonment and making rehabilitation programs more relevant, the overrepresentation of Aboriginal persons in carceral institutions continues. Societal and systematic prejudices are extremely deep. Anke Allspach contends that contemporary social "problems" within Aboriginal communities "cannot be seen as individualistic or culturally specific, but are gendered consequences of colonialism and embedded

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[98] *R. v. Gladue*, 1999, Op. Cit.
[99] Pelletier, 2001, Op. Cit.:470, 477.
[100] Evelyn Zellerer, "Culturally Competent Programs: The First Family Violence Program For Aboriginal Men In Prison," *The Prison Journal*, 83(2, June), (2003):183.
[101] Pelletier, 2001, Op. Cit.:470, 478.
[102] Faizal Mirza, "Mandatory Minimum Prison Sentencing and Systematic Racism," *Osgoode Hall Law Journal*, 39(2 and 3), (2001):492.

racialized state doctrines and henceforth are also the responsibility of the Canadian nation state."[103] For Allspach, inexorable colonial violence within Canadian criminal justice systems works on "active inactivity" in denying adequate legal support to indigenous women.[104] Several of Allspach's research participants divulged that they had not been provided proper legal counsel in the criminal justice system.[105]

Surprisingly, vestiges of the Justice of the Peace provisions of the *Indian Act* that this dissertation will show were historically used to imprison "Indians" are now re-purposed as a method of limited reform. The *Indian Act* allows the appointment of Justices of the Peace for by-law and minor *Criminal Code* infractions and, although the Federal Government no longer pursues this route, some provinces have dedicated Justices specifically to Aboriginal issues or have instituted programs dedicated to recruiting and training of indigenous Justices.[106] In northern communities, the high costs of circuit courts and disagreements about the nature of offences, who is affected, and what the consequences may be, have encouraged the recruitment of indigenous Justices of the Peace.[107] A major motivating factor in employing Indigenous Justices is to ensure that offenders are evaluated by persons who are familiar with their circumstances and how their alleged offences impact their communities; however, experience has proven it difficult to find volunteers willing to become Justices in their own communities.[108] Contrary to concepts of legal neutrality, these Justices are meant to purposefully use their personal knowledge.[109]

In contrast to the convening of sentencing circles in response to specific offences, community justice committees present ongoing opportunities to draw on the guidance of the community.[110] One form of justice committee, the elder panel, brings culturally-specific local knowledge to sentencing. Elders or community leaders act in an advisory capacity to ensure that judges are informed of local norms and circumstances that have a bearing on the case.[111] Justice committees were first used in the remote north where communities had to decide how to deal with

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[103] Anke Allspach, "Landscapes of (Neo-)Liberal Control: The Transcarceral Spaces Federally Sentenced Women In Canada," *Gender, Place and Culture*, 17(6, December), (2010):711.
[104] Ibid:712.
[105] Ibid.
[106] Katherine Beaty Chiste, "Getting Tough on Crime the Aboriginal Way: Alternative Justice Initiatives in Canada," *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005):219.
[107] Ibid:219.
[108] Ibid:220.
[109] Ibid:221.
[110] Ibid:222.
[111] Williams, 2002, Op. Cit.:473.

offences in the potentially long period before the conventional justice system could intervene.[112] Consequently, many northern communities see them as a "return to traditional ways, when an entire community and its respected leaders were collectively responsible for restoring harmony after a harm had been committed."[113] The greater acceptance of indigenous justice practices in places socio-legally understood as "Indian" is apparent in that, when justice committees have also been attempted in southern and urban communities, "closer contact with the legal profession throws up roadblocks to the process" in raising issues such as that of liability insurance.[114] Manitoba and Alberta lead in using these committees and Québec is relatively accepting of their common goals of rehabilitation and prevention.[115] The justice committee has been used most widely with young offenders in the twelve- to seventeen-year-old age range because the 1984 *Young Offenders Act* allows for alternative forms of justice.[116] Some committees are entirely indigenous while others are made of persons of various identities because the spirit of the committees is to glean information from all of those who are connected with the offender and the crime regardless of their ethnicity.[117]

The use of a committee changes the physical and psychological place of a courtroom. Instead of the conventional staging of a judge sitting, "on high," with lawyers making submissions as learned proxies, committees generally sit around a table and include the community in the discussion rather than countenancing them as spectators.[118] An offender is thus conceptualized as part of a network that is operating dysfunctionally rather than an isolated aberrant individual.[119] The perspective gained from placing offenders in this context is a major contribution of Aboriginal peoples to the Criminal Justice System.[120]

In spite of detractors, Katherine Chiste maintains that indigenous justice actually requires those involved to "get tougher on crime, but in a different way: not by isolating offenders from their crime and its consequences, but by *connecting* them to the victims and community their criminal act has disturbed."[121] While the Community Holistic Circle Healing program in Hollow Water, Manitoba, does tend to dispense shorter sentences, five years of supervision by program

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[112] Chiste, 2005, Op. Cit.:222.
[113] Ibid.
[114] Ibid:223.
[115] Ibid.
[116] Ibid.
[117] Ibid.
[118] Ibid:224.
[119] Ibid.
[120] Ibid.
[121] Ibid:218-219, 255.

teams is required before offenders are fully reintegrated into the community whereas the maximum probation period in the conventional justice system is three years.[122] The Toronto Aboriginal Legal Services Community Council offers a diversion program that admits offenders who admit their guilt to a "community sentence" based on counseling, treatment, and restitution.[123] The purpose of this approach is to "return criminal justice responsibility to the Aboriginal community, to reduce recidivism, and to make offenders more accountable" in the places where they live.[124]

A major criticism of justice committees was raised by indigenous women during the proceedings of the Royal Commission on Aboriginal Peoples: inappropriate choices may be made in the selection of the committee or powerful families could dominate proceedings.[125] As restorative justice increases in breadth into many different types of crime, as well as beyond indigenous communities, the appropriateness of restorative justice models for certain types of crime is actively debated. In cases involving sexual assault or domestic violence, serious issues of risk assessment, safety, and the needs of victims must be addressed.[126] Emma Cunliffe and Angela Cameron refute the discourse-limiting negation of texts as important influences when setting the institutional priorities of "alternative" justice initiatives.[127] Cunliffe and Cameron find that restorative justice is not achieved when "patterns of violence against Aboriginal women are absent from the texts of judicially convened sentencing circle decisions in favour of an institutional focus on the possibility of ameliorating the rate of incarceration of Aboriginal men."[128] Joanne Belknap and Courtney McDonald use interviews with Judges to raise questions about, and call for more research into, the complex intersections of racialization, gender, law, and colonialism.[129] Both methodological treatments of this issue point to the repercussions of colonialism yet neither have the basis provided in this dissertation to identify imprisonment as a colonial tool of assimilation rather than its socio-economic or systematic legacy.

The New Zealand system performs according to an interesting model of indigenous restorative justice. Youth Committees of the Family Group Conference, structured on Maori ideas

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[122] Williams, 2002, Op. Cit.:480.
[123] LaPrairie, 2005, Op. Cit.:242.
[124] Ibid:242.
[125] Ibid:224.
[126] Tomporowski, et. al., 2011, Op. Cit.:826.
[127] Cunliffe and Cameron, 2007, Op. Cit.:1-35.
[128] Ibid:35.
[129] Joanne Belknap and Courtney McDonald, "Judges' Attitudes About and Experiences With Sentencing Circles in Intimate-Partner Abuse Cases," *Canadian Journal of Criminology and Criminal Justice*, 52(4,July), (2012):369-395.

of restorative justice, have been used since the 1989 *Children, Young Persons and Their Families Act* legislated their use for all children in the fourteen- to sixteen-year-old age group, regardless of cultural origin.[130] The New Zealand Family Group Conference brings together a committee of the offender, the victim, their families, and their supporters. As a whole, the group creates a "disposition" to deal with the offence in a way that will lessen the chances of future criminal acts by the offender and move towards resolution for the victim.[131] Its intention is to promote healing rather than punishment. In addition to the commendable confluence of indigenous and state structures to promote justice in a culturally competent and equitable manner, Family Group Conferences are seen as efficacious measures and have received positive responses from New Zealand police forces.[132]

2.4 Literature for an Emergent Criminalization: "Aboriginal Gangs"

Aboriginal gangs are a growing predicament for law enforcement, criminal courts, and correctional institutions. There is a great deal to learn about contemporary manifestations of Aboriginal gangs and just as there is so little scholarship on the specific historical-geographies of indigenous criminalization. Jana Grekul and Patti LaBoucane-Benson enter the fray wielding sociological tools that identify the "street gang" characteristics of Aboriginal gangs.[133] For Grekul and LaBoucane-Benson, the overrepresentation of Aboriginal persons in prisons "compounds the situation, making gang affiliation an almost expected outcome for increasing numbers of Aboriginals, particularly since the street gang-prison gang connection is pronounced for this population."[134] Whereas they acknowledge that "[c]ultural conflict, poverty, lack of opportunity, and lack of power contribute to a cycle of behaviours that may be the outcome, in part, of structural inequality," this dissertation submits that imprisonment is far more than a factor that "perpetuates the problems" as inmates are released into circumstances of structural inequality.[135]

Instead, criminalization, geographic restriction, and imprisonment itself are major pillars in the structure of indigenous relationships with the state. It is through these structural inequalities that poverty, conflict, and lack of opportunity have been perpetuated. In other words,

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[130] Chiste, 2005, Op. Cit.:223.
[131] Ibid.
[132] Ibid.
[133] Jana Grekul and Patti LaBoucane-Benson, "Aboriginal Gangs and Their (Dis)placement: Contextualizing Recruitment, Membership, and Status," *Canadian Journal of Criminology and Criminal Justice*, 50(1, January), (2008):59-82.
[134] Ibid:63.
[135] Ibid:71.

contemporary assessments that the "interaction of.... indicators of structural inequality with each other, with community and cultural breakdown as a result of historic, economic, and political processes, and with systemic discrimination results in Aboriginal over-representation in prisons" have got it backwards.[136] There is little to inform this literature that indigenous communities were purposefully subjected to imprisonment, not because they were socially and culturally bereft and disordered, because they were lively and powerful in their indigeneity: this dissertation will establish that imprisonment was used to assert the primacy of state law over existent indigenous law.

The very title of Jana Grekul and Kim Sanderson's "'I thought people would be mean and shout.' Introducing the Hobbema Community Cadet Corps: a response to youth gang involvement?" reveals their disquiet with this program.[137] The Hobbema Community Cadet Corps (HCCC) is a "military-style program run by two Caucasian" Royal Canadian Mounted Police officers for approximately one thousand children between the ages of six and eighteen in a community populated by four First Nations.[138] The Hobbema area has "attained the reputation of being a hotbed of crime and disorder."[139] The objective of the HCCC is to divert young people from gangs and criminal activity.[140] Structural inequalities and socio-economic marginalization give Hobbema the sociological indicators of risk for both criminal victimization and criminal offence.[141] The operation of six street gangs in Hobbema is of "paramount concern" in circumstances where, whatever the pitfalls of stereotyping, "the fact is that people are dying as a result of gang-related 'warfare'."[142] Grekul and Sanderson look for practical paths of improvement. Nonetheless, their examination of diversion programs through structured sociological indices misses deeper connections to the criminalization of indigenous persons when they point to "all that the legacy of colonization and residential schools entails" and skip forward to possible programmic solutions.[143] While communities develop powerful indigenous strategies for healing and scholars engage in imperative "something must be done in the meantime" work in

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[136] Grekul and LaBoucane-Benson, 2008, Op. Cit.:77.
[137] Jana Grekul and Kim Sanderson, "'I thought people would be mean and shout.' Introducing the Hobbema Community Cadet Corps: a response to youth gang involvement?" *Journal of Youth Studies*, 14(1, February), (2011):41-57.
[138] Ibid:42.
[139] Ibid.
[140] Ibid.
[141] Ibid.
[142] Ibid:44, 51.
[143] Ibid.:48.

crisis conditions, this dissertation will uncover the precise legal historical-geographical foundations of untenable structural disparities.[144]

Rick Ruddell and Shannon Gottschall's investigation of prison gangs finds that individuals associated with "Aboriginal," "Asian," and "street" gangs have different correctional profiles than "Outlaw Motorcycle" and "Traditional Organized Crime" gangs.[145] While Aboriginal gang membership was primarily drawn "from their ethnic group," the majority of "Asian" gang members did not self-identify as "Asian."[146] The great majority of Motorcycle and Traditional Organized Crime gang members were "White."[147] Between 1 January 2006 and 31 August 2009, 9.5% of individuals admitted on new sentences to federal penitentiaries in Canada were identified by an Institutional Parole Officer as belonging to a gang.[148] Once individuals are designated, Security Intelligence Officers investigate their gang involvement and classify them according to type of gang. [149] Identified gang members in prisons are statistically more likely to be younger, male, and "Aboriginal," "Asian," or "Black."[150] Members of these gangs are assessed as being at increased risk, having greater need of rehabilitation, and possessing lower potential for reintegration.[151] Gang members have higher rates of property and drug offences, are more likely to have previously been incarcerated, and are more frequently placed in prisons with higher levels of security even though a larger proportion of non-gang inmates are serving sentences for violent offences.[152] "Aboriginal" and "Street" gang members are least likely to be placed in minimum security facilities.[153] "Aboriginal" gang members have the highest rates of previous convictions, the lowest aggregate sentences, and the highest rates of violence while under sentence.[154]

Springing from a "long history of trust," Lawrence Deane, Denis Bracken, and Larry Morrissette conducted a remarkably innovative and collaborative study of "Aboriginal street gang" members in Winnipeg, Manitoba.[155] The Ogijiita Pimatiswin Kinamatwin Program began when two "original leaders of one of the city's most noted Aboriginal gangs" approached Deane,

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[144] Grekul and Sanderson, 2011, Op. Cit.:52.
[145] Rick Ruddell and Shannon Gottschall, "Are All Gangs Equal Security Risks? An Investigation of Gang Types and Prison Misconduct," *American Journal of Criminal Justice*, 36, (2011):265-279.
[146] Ibid:273.
[147] Ibid.
[148] Ibid:268-269.
[149] Ibid:269.
[150] Ibid:271-272.
[151] Ibid.
[152] Ibid:273.
[153] Ibid:274.
[154] Ibid.
[155] Lawrence Deane, Denis Bracken, and Larry Morrissette, "Desistance Within An Urban Aboriginal Gang," *Journal of Community and Criminal Justice*, 54(2), (2007):125-141.

Bracken, and Morrissette and requested "help for gang members who were coming out" of a nearby federal penitentiary.[156] One of the three authors self-identifies as "Aboriginal," has both family and social ties to the gang members, grew up in the same neighbourhood, previously ran a program in the area based on traditional teachings for youth, and had provided support for Aboriginal persons in prison.[157] Another of the authors was involved in an inner city housing renewal project that could potentially provide employment to those who chose to take the program.[158]

The young male members of this "urban Aboriginal gang, made decisions to desist from crime and participate in a program which supported these decisions" while retaining social ties to a "street gang" defined as having a "criminal orientation, geographic terrain, self recognition in terms of colours, tattoos and insignia, and an organizational structure."[159] Despite predominantly violent media portrayals of gang life, those who chose to refrain from the gang's criminal activities were, for the most part, respected and supported by the gang as they pursued a program of acquiring carpentry skills, engaging in counselling, connecting to educational opportunities, and learning traditional indigenous "pro-social values" through "cultural teachings."[160] Gang members in the program were under surveillance since they were "working quite visibly in the neighbourhood and were questioned regularly by police about knowledge they may have had of offences committed by others."[161] They were not entirely free of domestic disputes, breach of parole, and "spontaneous incidents" such as fights; however, it was evident that the program was successful when none of the active participants between 2001 and 2006 were arrested for organized gang-related activities even though all had long histories of frequent incarceration.[162] Deane, Bracken, and Morrissette's claims that it is an "unrealistic expectation to ask gang members who were socially isolated from mainstream society, to sever social affiliations with lifelong friends" and that "desistance from crime" can be a more successful goal than achieving the dismantling of gang social networks is proven through practice.[163]

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[156] Deane, et. al., 2007, Op. Cit.:127.
[157] Ibid:128.
[158] Ibid.
[159] Ibid:126.
[160] Ibid.
[161] Ibid:128.
[162] Ibid.
[163] Ibid.

In the Ogijiita program, providing stable employment was consistent with one of the "primary functions of gangs… to provide economic survival opportunities for members."[164] Gang members felt strongly affiliated to the program and took the Ogijiita name as part of their identity "given to them in a ceremony by their elder, and reflecting their new identity as a work crew or as a group of former offenders."[165] Most of the Ogijiita participants "said that they first encountered their traditions through cultural programs provided in prison."[166] For marginalized indigenous peoples, becoming situated in positive indigenous identities is a critical aspect of restorative justice. However, Deane, Bracken, and Morrissette offer the indispensable clarification that these teachings are weightier than positive self-esteem. Sacred indigenous cultural and spiritual traditions "experientially present the thought forms and values that have aided Aboriginal people in survival for many millennia."[167] Indigenous teachings and principles of order are substantive and practical.

2.5 Carceral and Legal Historical Geographies in Canada: The "Indian"

Legal geography is a growing field that challenges the concept of "blind justice" operating in undifferentiated "space" with social and political realities.[168] Evelyn Peters and Bettina Koshade's work on indigenous jurisdiction and the Ardoch, Ontario, Algonquin First Nation is evidence of one of the many opportunities for innovative research in this arena of scholarship.[169] From her valuable research in First Nations geography and policy, Peters has steadily built an evidence-based rationale and framework for legal geography.[170]

Renisa Mawani's analysis of the development of the concept of the "half-breed" is theoretically complementary to Peter's legal geography. Under the *Indian Act*, a "half-breed" was "a legal subject" yet the authors and implementers of that legislation "never fully articulated the racial-legal parameters" of this form of evolving indigeneity and "never explicitly defined… its

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[164] Deane, et. al., 2007, Op. Cit.:130.
[165] Ibid:134.
[166] Ibid:137.
[167] Ibid.
[168] Bettina Koschade and Evelyn Peters, "Algonquin Notions of Jurisdiction: Inserting Indigenous Voices into Legal Spaces," *Geogr. Ann.*, 88(3), (2006):299.
[169] Ibid.
[170] Evelyn J Peters, "Métis Populations in Canada: Some Implications of Settlement Patterns and Characteristics," *Native Studies Review*, 17(2), (2008):19-44; Evelyn J Peters and Vince Robillard, " 'Everything You Want is There': the Place of the Reserve in First Nations' Homeless Mobility," *Urban Geography*, 30(6), (2009):652-680; Evelyn J Peters, "'[W]e Do Not Lose our Treaty Rights Outside the… Reserve': Challenging the Scales of Social Service Provision for First Nations Women in Canadian Cities," *GeoJournal*, 65, (2006):315-327.

territorial implications."[171] Mawani's observation that the "half-breed was marked by a dexterity and pliability that made racial determinations slippery, unintelligible, and geographically unenforceable" is further articulated in this dissertation by mutually valid evidence that the very ambiguity of colonial ideas of the "half-breed" were used to enact legal restrictions based on perceived racial association.[172] As Mawani explains, in addition to phenotyping, "efforts to distinguish half-breeds and Indians were also asserted through the nonvisual, unseen, and hidden markers of race, including (im)moral qualities and criminal impulses."[173] As this dissertation makes evident, despite political and scholarly attempts to establish clear distinctions between "status Indians" and the broader group of self-identified indigenous peoples, the legal category of "Indian" has never been as discrete as discussions of status appear to imply.

Robin Jarvis Brownlie illustrates that, according to the ideology of the Department of Indian Affairs' "civilization" program, "First Nations people were in essence 'going white,' being legally transformed from Indians into whites" and they "had to have become 'white' first, or at least 'non-Indian'" in order to be enfranchised.[174] Mary Ellen Kelm ascertains that well into the twentieth century, medical scholarship "added medicalized and pathologized dimensions" to racializations of indigenous peoples.[175] These "scientific" prejudices "emerged as much from what nonnatives feared most within their own societies as it did from what they observed on the reserves they studied."[176] While changes to language may occur over time, underlying racializations are slower to change.

On Canada's West Coast, discussions of criminality in indigenous communities were "fused together with prevailing assumptions regarding their fragile sensibilities, their need for colonial tutelage, and to justify their segregation on reserves."[177] In particular, through criminalizing and imposing territorial restrictions on the trade and consumption of alcoholic intoxicants, the "Dominion government rendered Indians to have tastes, desires, and impulses that were already potentially criminogenic."[178] Although charges resulting from the criminalization of

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[171] Renisa Mawani, "'Half-Breeds,' Racial Opacity, and Geographies of Crime: Law's Search for The 'Original' Indian," *Cultural Geographies*, 17(4), (2010):491,496.
[172] Ibid:496
[173] Ibid:489.
[174] Robin Jarvis Brownlie, "'A Better Citizen Than Lots of White Men': First Nations Enfranchisement – an Ontario Case Study, 1918-1940," *The Canadian Historical Review,* 87(1), (2006):30.
[175] Mary Ellen Kelm, "Diagnosing the Discursive Indian: Medicine, Gender, and The 'Dying Race'," *Ethnohistory*, 52(2), (2005):371-406.
[176] Ibid:397.
[177] Mawani, 2010, Op. Cit.:497.
[178] Ibid:497.

the "Indian" liquor trade may have been used on the West Coast to remove "mixed-race peoples" from reserves, the mechanism of applying the criminalizations of the *Indian Act* appears to have operated differently than it did in many of the legal geographies of this dissertation.[179] Mawani tells a story of four "half-breeds" on a British Columbia reserve whom the Indian Agent believed were legally allowed to purchase whisky.[180] Persons with close or visible ties to indigenous communities were not legally permitted to purchase whisky in other Canadian jurisdictions. Moreover, although Wikwemikong, like the majority of British Columbia, was unceded and Indian Agents were never able to completely govern its disputed borders, prohibitions against the liquor trade were considered legally valid according to the measures of the *Indian Act* regarding intoxicants on reserves and the possession, manufacture, or consumption of intoxicants by any person considered an "Indian," "non-Treaty Indian," or to whom the phrase "Indian mode of life" could be applied.[181]

Although it does not trace the origins of "Indian" imprisonment, in subject matter, Joan Sangster's "'She Is Hostile to Our Ways': First Nations Girls Sentenced to the Ontario Training School for Girls, 1933–1960" is closest to this dissertation. Sangster's differentiation of the social reforming of the marginalized "working-class" and "Indians" is helpful. While both, in a sense, were assimilative "nation-building projects," Sangster makes the critical argument that the "dispossession of Native peoples from their lands, their resulting social dislocation, and the political control expended by the federal Indian Act, as well as the denigrations of racism, also set the colonial project of assimilation apart."[182] Although relatively few "Indian" or Métis girls were admitted to the Ontario Training School for Girls reformatory, the numbers of committals increased in the late 1940s "mirroring the growing over-incarceration of Native peoples in post-

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[179] Mawani, 2010, Op. Cit.:497.
[180] Ibid:493, 498.
[181] The misattribution of the phrase "mode of life" is discussed in Chapter Seven.
[182] Sangster also provides historically-grounded feminist critiques in other related areas. Joan Sangster, "'She Is Hostile to Our Ways': First Nations Girls Sentenced to the Ontario Training School for Girls, 1933–1960," 2002, *Law and History Review*, 20(1, Spring), (2002):60; Joan Sangster, "Girls in Conflict with the Law: Exploring the Construction of Female Delinquency in Ontario, 1940-1960," *Canadian Journal of Women & Law*, 12(1), (2000):1-31; Joan Sangster, "Criminalizing the Colonized: Ontario Native Women Confront the Criminal Justice System, 1920-60," *The Canadian Historical Review*, 80(1, March), (1999):32-60; Joan Sangster, "Archiving Feminist Histories: Women, the 'Nation' and Metanarratives in Canadian Historical Writing," *Women's Studies International Forum*, 29, (2006) 255-264; Joan Sangster, "'Pardon Tales' from Magistrate's Court: Women, Crime, and the Court in Peterborough County 1920-50," *Canadian Historical Review*, LXXXIV(2), (1993):161-197; Tamara Myers and Joan Sangster, "Retorts, Runaways and Riots: Patterns of Resistance in Canadian Reform Schools for Girls, 1930-1960," *Journal of Social History*, 34(3, Spring), (2001):669-697.

World War II Canada, a trend that escalated even further in subsequent decades."[183] Importantly, as occurred with DIA carceral facilities, the post-war increase in indigenous girls in reformatory schools outside of the classical purview of the Department of Indian Affairs "reflected governments' new interest in integrating Native peoples into the heart of the welfare state."[184] Despite this attempt at change, racialized ideologies of an "unreachable Native cultural persona" nevertheless "remain embedded" in Canada's criminal justice systems.[185] Sangster critiques the ways in which ideologies of cultural impoverishment pour out seemingly sympathetic tales of "unsalvageable victims" and, in so doing, avoid action on deeper issues of power relations such as the inequalities wrought by colonialism.[186]

Sangster acknowledges that archival files, government records, and socio-medical documents are a "precarious way of understanding Native girls in conflict with the law" since they are "highly mediated" by authority figures.[187] Deena Rymhs agrees that the "mechanisms of discipline Foucault describes – observation, collation of records, institutional control," are more intense for certain racialized groups.[188] It is vital to listen for stories in archival research materials and remember that all stories are situated and partial.[189] Hermeneutics provides the archival researcher with helpful principles for interpreting archival data. Considering each document's authorship, intended and unintended purposes, intertextual connections, and possible audiences, brings focus to archival research and builds a deeper awareness of wide potential within the limits of archival data.[190] The hermeneutic contexts of such sources remain highly pertinent when the words they contain are attributed to Aboriginal persons engaged with these powerful systems.[191] Sangster believes that these sources can be fruitfully, and critically, read. Sangster agrees with "historians who support the endeavor of at least attempting to write across the boundaries of our

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[183] Sangster, 2002, Op. Cit.:60.
[184] Ibid:67
[185] Ibid:60, 69.
[186] Ibid:61.
[187] Ibid:63.
[188] Deena Rymhs, *From the Iron House: Imprisonment in First Nations Writing*, (Waterloo: Wilfred Laurier Press, 2008):12.
[189] Julie Cruikshank compares the methodological issues in following stories through oral and written sources. Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination*, (Toronto: University of British Columbia Press, 2005); Julie Cruikshank, "Oral Traditions and Written Accounts: An Incident from the Klondike Goldrush," *Culture*, IX(2), (1989); Julie Cruikshank, *The Social Lives of Stories: Narrative and Knowledge in the Yukon Territory*, (Lincoln: University of Nebraska Press, 1998); Julie Cruikshank et al., *Life Lived Like a Story: Life Stories of Three Yukon Native Elders*, (Lincoln: University of Nebraska Press, 1990).
[190] James Duncan and David Ley, "Introduction: Representing the Place of Culture," *Place/Culture/Representation*, Eds. James Duncan and David Ley, (New York: Routledge, 1997):8-10.
[191] Sangster, 2002, Op. Cit.:63.

own identity and experience."[192] Reading in this way entails "searching the documentary record for micro-events, those that seem to have no purchase in the manufacture of dominant history" in order to "prod the gaps left by mainstream histories."[193] While no scholarly methodology confers omniscience, profound aspects of carceral resistance can be uncovered using archival sources.

Sangster's work does not use the term "legal geography"; however, it does make evident that archival sources and historical documents can bring to light legal-geographic changes and continuities. The endurance of social concerns can be seen in archival documents when terms used to denote socially constructed concepts such as "race" are simply retitled "nationality."[194] While she does not link it to assimilative "mode of life" legislation, Sangster relates that

> a status Indian girl admitted to OTSG from a large city, whose family was solidly blue collar, was described in her file with little reference to her Native heritage. Yet girls from reserves, whether Metis or status Indians, were more likely to be analyzed in terms of their Native background, as the reserve (and particularly hunting and trapping subsistence) was equated with a racialized culture of backwardness.[195]

Another aspect of "justice by geography" is revealed in the limited alternatives to incarceration faced by "reserve girls" when they were brought before rural or small-city courts.[196]

While making greater use of a different government system, the Department of Indian Affairs continued to influence carceral legal geographies. Family information such as arrests for the consumption of liquor, other criminal records, "illegitimacy," and sexual "immorality" all served to justify incarceration and the "suspicions of those like Indian agents intent on regulating reserve morality were enough evidence for a magistrate or judge to proscribe training school."[197] Indigenous girls were under disproportionate surveillance.[198] Amazingly, once policy changes made admitting "Indian" girls into reformatories easier, some residential schools claimed that "residential schools were never meant to be correctional institutions" and attempted to redirect girls with "discipline problems" to reformatories.[199]

A parallel hermeneutic approach to indigenous incarceration can be found in Deena Rymhs' *From the Iron House: Imprisonment in First Nations Writing*. Rymhs places residential

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[192] Sangster, 2002, Op. Cit.:64
[193] Michael Ripmeester, "Intentional Resistance of Just 'Bad Behaviour': Reading for Everyday Resistance at the Alderville First Nation, 1837-76," *Blockades and Resistance: Studies in Actions of Peace and the Temagami Blockades of 1988-89*, Eds. Bruce W Hodgins, Ute Lischke, and David T McNab, (Waterloo: Wilfred Laurier University Press, 2003):107.
[194] Sangster, 2002, Op. Cit.:66.
[195] Ibid:66.
[196] Ibid:79.
[197] Ibid:73.
[198] Ibid:74.
[199] Ibid:78.

schools and prisons on the same "carceral continuum."[200] As Rymhs observes, for indigenous peoples, "even home, the reserve, in its physical segregation, curtailing of indigenous territory, and concentration of economic poverty, has been compared to a prison."[201] Rymhs illustrates the material contexts in which indigenous persons may sit in cells surrounded by inscribed "markings" that "rise out from their illicit spaces and begin to speak a history… a record, a proxy history of intersecting lives and lost kinships."[202] Rymhs' literary flair is communicated through vibrant description of prison walls that have been transformed into

> a medium for this history, a narrative that emerges from the undersides of bunks. The markings signify a counter-discourse, a quiet and intractable conversation carried out among this structure's occupants… the prison is not just an apparatus of detention and punishment, but a structure signifying the colonization, criminalization, and suppression of a people…With its parallel, insidious presence in the recent histories of Aboriginal people, the residential school has also been likened to a prison. These institutions played a regulatory and punitive function that instilled a similar sense of cultural guilt….Both the residential school and the prison used surveillance as a means of control.[203]

To Rymhs, these inscriptions are documents that demonstrate the "prevalent role that penal and regulatory institutions have played in the recent histories of Aboriginal people."[204] The ways in which penal and regulatory institutions were inequitably deployed, far earlier than can be attributed to "recent" history, are uncovered in this dissertation.

2.6 Peroratio: Methodological Paradox

A danger of research on sensitive topics is that it can be exploitative, paternalistic, or outright harmful. Gilian Balfour counsels that indigenous communities may not have the "resources or trust to participate in research collaborations to document colonial traumas that have undermined family and community life, such as parenting, substance abuse and family violence."[205] If indigenous communities do choose to pursue sensitive topics, the momentum for both research and publication must come from the community rather than from any outside government body or academic institution. *Restoring the Balance: First Nations Women, Community, and Culture* is an example of the sound scholarship and leadership of indigenous

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[200] Rymhs, 2008, Op. Cit.:5.
[201] Ibid:5.
[202] Ibid:1.
[203] Ibid:2.
[204] Ibid:1.
[205] Gilian Balfour, "Do Law Reforms Matter? Exploring the Victimization – Criminalization Continuum in the Sentencing of Aboriginal Women in Canada," *International Review of Victimology*, Published Online Prior to Print, 29 May 2012:15.

women.[206] Centuries of "scientific" study of indigenous peoples has made it necessary to state that indigenous communities can bring much more valid knowledge to their existence than any "outside" research project can. Despite common histories of false socio-legal and geographic aggregation, individual and community experiences vary. Just as the colonial intention of assimilating indigenous persons did not result in their mimetic transformation into members of the dominant cultures, the written words of government officials do not represent the totality of indigenous experiences, knowledge, or human agency.[207]

Paradoxically, the inaccurate homogenization of the many diverse groups of indigenous peoples in Canada as "Indians" or "Aboriginal," "half-breeds" or "Métis," and "Eskimo" or "Inuit," combined with paternalistic governmental collection of information on the peoples thus categorized, makes this research possible. Moreover, the embedding of this false classification and the discrimination it entailed into Canadian legal systems, social prejudices, and geographies makes it all the more important to pursue this line of inquiry. Although it is indigenous peoples who have been the colonial subject, the ideology that objectified them demands attention. Canadians still operate within the systems that create, and perpetuate, this inequality yet privacy restrictions and ethics guidelines place appropriate limitations on investigations into this highly sensitive arena. Although the only true understandings of the effects on indigenous peoples must come from within, too little is known about how colonial mentalities practiced this legal geography.

As Wendy Jepson affirms in her legal geography of water in south Texas, "attention to documents… reveals how the legal process unfolds, cuts off political avenues, writes new narratives, and ultimately creates new geographies."[208] Restricted and open archival files containing the internal correspondence, policy-making, policy articulation, proceedings, and considerably ecumenical information-gathering of Indian Affairs, Department of Justice, and law enforcement officers facilitate the uncovering of significant modalities of the legal relationships between indigenous peoples and colonizing governments. Historical newspapers, circulars, and newsletters offer informative glimpses into popular interests in, and representations of, local and national legal geographies of indigenous peoples. Manitoulin Island newspapers also acted as disseminators of significant civic information such as court calendars and details of local convictions. The published sessional papers of federal and provincial governments often provide

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[206] Gail Guthrie Valaskakis, Madeleine Dion Stout, and Eric Guimond, Eds., *Restoring the Balance: First Nations Women, Community, and Culture*, (Winnipeg, Manitoba: University of Manitoba Press, 2009).
[207] Homi K Bhabha, *The Location of Culture*, (New York: Routledge, 2002):112.
[208] Jepson, 2012, Op. Cit.:628.

a great deal of qualitative and quantitative information as well as a fascinating contrast between the public rhetoric and private concerns of government departments. Historical legal handbooks, legislation, and judicial decisions reveal the evolution of the law as everyday life and legal practice interplay with legal codification and political priorities. In a scholarly context in which the historical-geographies of assimilation through incarceration have not been explored, archival methodologies are persuasive tools of investitive research. The relationships between the practice of colonizing legal ideology and geography are the focus of this dissertation.

Chapter 3

Historical Geographies of Legal Dissonance: Assimilative State Law

The "place" of First Nations peoples in Canadian society is a controversy propelled in no small measure by disputes over who has the right to engage in the debate. Do proponents of inclusivity recognize that the indigenous peoples whose territories precede the Canadian state have a right to self-government? Does inclusivity mean that diverse groups, including the clumsy category of non-Aboriginals, have an equal voice despite historical atrocities and unequal access to platforms of public communication? Is this a public debate or a private matter in which the state refrains from interference within the homes of a singularly multicultural Canada? Is the sovereign self-determination of individual First Nations, rather than self-government within the Canadian state, the appropriate scale for this discussion?

Wherever political viewpoints are moored in the difficult balance between First Nations diversity and the constitutive prerogative of the Canadian state, powerful centralized programs predicated on governmental unity of purpose create a measure of common experience. First Nations peoples and non-Aboriginal Canadians, whether subscribers to those labels or not, share in the historical geographies of colonizing indigenous peoples: all take part in the ways in which colonial pasts are remembered and each influences how colonial repressions continue to be performed. Every person inhabiting the lands that lie within Canadian borders has a responsibility to critically contemplate colonialism. Within a spectrum of individual and community responses, centralized systems of official state interactions with persons recognized as "Indians" have resulted in marked empathic experience. A crucial element of this shared experience is the segregation of "Indians" from adult membership in the Canadian state.

3.1 The Function of Colonialism: Geographic Imposition of State Law and the Separation of "Indians" from Canadian Society

A function of colonialism was to extend European systems of law over indigenous lands, persons, and ways of life. Geography was vital to the growth and maintenance of empires governed from afar in European capitals and imposed by envoys in the "New World" according to pseudo-Christian philosophies of divine imperial right. As Cole Harris illustrates through British Columbia, the colonial instrument of mapping was used to translate the "unfamiliar space" of indigenous territories into "Eurocentric terms, situating it within a culture of vision,

measurement, and management."[1] Harris argues that deeper understandings of the workings of colonialism lie in recognizing its "basic geographical dispossessions of the colonized" morally legitimized through a "cultural discourse that located civilization and savagery and identified the land uses associated with each."[2] Imperial subjugation was achieved through the manipulation of geographical knowledge.

Early "Indian" policy was established through the bureaucratic realms that converged in the Colonial Office in London, England. Brian Titley's insightful work on the structure and ethos of the DIA clearly situates the formation of Indian Affairs within a prerogative to enforce the law. The seed of what became Canada's Department of Indian Affairs was sown in the late seventeenth century when Indian Commissioners in Britain's Thirteen Colonies were given the mandate to govern the fur trade and curb the illegal trade in alcoholic beverages.[3] Administering legal restrictions against liquor traffic with "Indians" would be an enduring preoccupation of the DIA and of law enforcement involving indigenous peoples.

Manitoulin Island, and all of the Great Lakes, were once part of New France. John Borrows reflects on the confluence of histories and concludes that association with fur trade interests in New France was what led the Huron, Odawa, and Ojibwa to go to war against the Haudenosaunee as they struggled to control trade in the Upper Great Lakes.[4] A "disruption of occupancy of Manitoulin Island" occurred in 1652 while the Haudenosaunee were prevailing in this conflict.[5] Although many Ojibwa and Odawa individuals "permanently fled west after their defeat" at the hands of the Haudenosaunee, others quickly returned to Manitoulin and, together, the Odawa, Ojibwa, and Potawatomi "eventually" reclaimed the island.[6]

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[1] Cole Harris, "How Did Colonialism Dispossess? Comments from an Edge of Empire," *Annals of the Association of American Geographers*, 94(1), (2004):165-182.; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia*, (Vancouver: University of British Columbia Press, 2002):175; Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change*, (Vancouver: University of British Columbia Press, 1997).
[2] Cole Harris, 2004, Op. Cit.:165.
[3] E Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada,* (Vancouver: University of British Columbia Press, 2005), 1.
[4] John Borrows, "Negotiating Treaties and Land Claims: The Impact of Diversity Within First Nations Property Interests," *Windsor Yearbook of Access to Justice*, 12, (1992):187.
[5] Ibid:187.
[6] According to Borrows, land use on Manitoulin was less intensive than it had been prior to the wars. Ibid:187.

Figure 4: The Great Lake Waters Within New France, 1688[7]

Within this map, Lake Huron, and all it contains, are depicted as part of the legal realm of New France. Manitoulin Island, and its indigenous inhabitants, were involved in abstracted colonial struggles to claim land as well as "on the ground" military clashes as colonial legal topographies evolved.

Initially, First Nations were sought as allies when European powers fought for dominance in the "New World."[8] The British classified the Odawa, Ojibwa, Huron, and Potawatomi amongst the "Western Indians."[9] At the outbreak of the British-French Seven Years' War, it was necessary that these colonizers create and maintain alliances with local military powers. First Nations possessed both the military might and geographical knowledge to be invaluable allies.[10]

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[7] Adapted from "Partie occidentale du Canada ou de la Nouvelle France [document cartographique] ou les nations des Ilinois, de Tracy, les Iroquois, et plusieurs autres peuples; avec la Louisiane nouvellement decouverte etc. dressée sur les memoires les plus nouveaux par le P. Coronelli, cosmographe de la serme. repub. de Venise ; corrigée et augmentée par le Sr. Tillemon ; et dediée a Monsieur L'abbé Baudrand," National Archives of Canada, R3908-2-4-F, Volume: 1.

[8] Cole Harris, 2004, Op. Cit.:175; Cole Harris, 1997, Op. Cit.

[9] Mark D Walters, "The Extension of Colonial Criminal Jurisdiction Over the Aboriginal Peoples of Upper Canada: Reconsidering the *Shawanakiske* Case (1822-26)," *University of Toronto Law Journal*, 46, (1996):278, 279.

[10] Brian S Osborne and Michael Ripmeester, "Kingston, Bedford, Grape Island, Alnwick: The Odyssey of the Kingston Mississauga," *Historic Kingston*, 43(January), (1995):92; Osborne and Ripmeester, "The

The Western Indians, along with the majority of Algonquian peoples, allied with France against Britain in the 1756-1763 Seven Years' War.[11] After the defeat of the French at the Plains of Abraham and the 1763 *Treaty of Paris*, Britain's indigenous allies retained their importance as military confederates while dissent fomented in the Thirteen Colonies.

Figure 5: 1763 *Treaty of Paris* Superimposed on the Indigenous Peoples of the Great Lakes[12]
Indigenous peoples are charted, yet coloured over with the colonial divisions of the *Treaty of Paris*, in this excerpt from a 1768 map.

In terminology that has since been the subject of great debate as First Nations advocate for their rights to land and self-governance, the *Proclamation of 1763* granted rights to land and self-determination based on mutual benefit. King George III commanded,

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Mississaugas between Two Worlds: Strategic Adjustments to Changing Landscapes of Power," *Canadian Journal of Native Studies*, XVII(2), (1997):259-292.

[11] Walters, 1996, Op. Cit.: 278, 279; Borrows, Op. Cit.:187.

[12] Adapted from "An Accurate Map of North America. Describing and distinguishing the British, Spanish and French Dominions on this great Continent; According to the Definitive Treaty – Concluded at Paris 10th Feby 1763 – Also all the West India Islands Belonging to, and possessed by the Several European Princes and States. The whole laid down according to the latest and most authentick Improvements, By Eman Bowen Geogr. to His Majesty and John Gibson Engraver. [cartographic material]," London: Printed for Robt. Sayer opposite Fetter Lane, Fleet Street, 1768, National Archives of Canada, Box 2000230116, Box 2000230119, Box 2000230120, Box 2000230121, Microfiche NMC11694, Microfiche NMC24630, Microfiche NMC44362, Microfiche NMC48906, Local Class No. H2/1000/[1763] (4 sections), Access Code: 90, Copyright: Expired.

> whereas it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, or who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds.[13]

The *Proclamation of 1763* recognized Aboriginal title to land, created a boundary between eastern colonial settlements and "Indian lands," and decreed that this reserved land could be ceded only to the Crown.[14] Rhetorically composed as a protection for Indians in unceded territories upon whom "great frauds and abuses" had been perpetuated, the *Proclamation* instilled the idea that indigenous and settler communities should be kept apart and, when exchanges occurred without the supervision and consent of the Crown, they were criminal.[15] A basic function of colonial officials was to enforce criminal law. The *Proclamation*

> expressly enjoin[ed] and require[d] all officers whatever, as well military as those employed in the management and direction of Indian Affairs... to seize and apprehend all persons whatever, who, standing charged with treasons, misprisons of treason, murders, and other felonies or misdemeanors, shall fly from justice, and take refuge in said territory, and to send them under proper guard, to the colony where the crime was committed, of which they stand accused, in order to take their trial.[16]

When instances of settler offences against indigenous persons occurred, colonial authorities "respected native customary law either by allowing native nations to retaliate or by adhering to the native 'ceremonies of condolence' at which satisfaction was paid."[17] If criminal allegations were made against "Indians," and early attempts to have the accused surrendered for trial failed, "officials were instructed by the commander-in-chief of British forces to seek satisfaction from the nations to which the accused natives belonged according to 'their own Customs and Ceremonies.'"[18] The remarkable distinction between the *Proclamation of 1763* and later colonial policies is that the onus of geographical segregation, and criminalization for transgressions, rested on colonizers rather than on indigenous peoples.

With the 1774 *Quebec Act*, a great span of *Proclamation* "Indian lands" became part of the Province of Québec.[19] Following the 1775-1783 American Revolution, partially incited by

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[13] "Headquarters – Canada – A History of the Indian Department in Canada and the Imperial Government Compiled by S. Stewart, Comprised of Reports, Memoranda and Correspondence (Plan of Georgian Bay Area," 1713-1907, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3016, File: 218,410, Part 1, Access Code: 90.
[14] Titley, 2005, Op. Cit.:2.
[15] "Headquarters – Canada – A History of the Indian Department," Op. Cit.
[16] Ibid.
[17] Walters, 1996, Op. Cit.:281.
[18] Ibid:281.
[19] Ibid:282.

British limitation of settler lands in the *Proclamation of 1763*, Indian Affairs was moved northward to Canada.[20] Therefore, a significant feature of the historical-geography of Upper Canada is that most of the province had once been set aside as "Indian territory" under the *Proclamation of 1763*.

The 1791 *Constitution Act* divided Québec into Upper and Lower Canada.

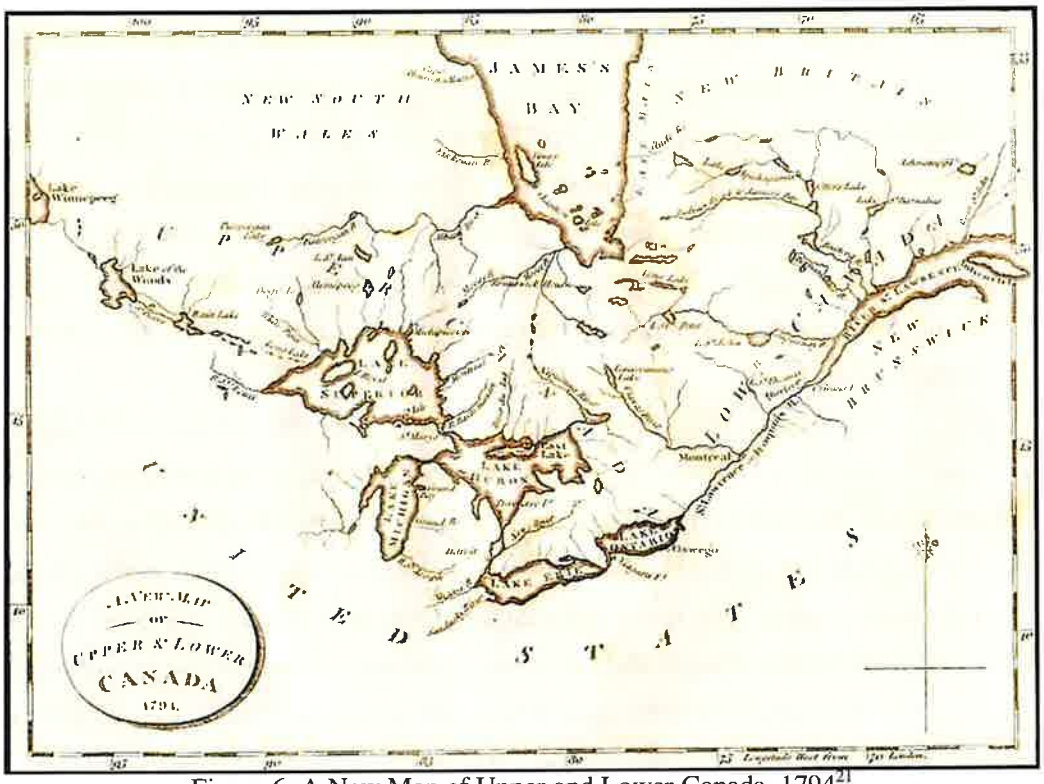

Figure 6: A New Map of Upper and Lower Canada, 1794[21]

Following American Independence, a colonial mapping took place in which Upper and Lower Canada were formed: the legal places where important "Indian policy" was created.

While localized governance often took precedence in the Maritimes and British Columbia, in Upper and Lower Canada, the imperial administration took on a close supervisory role until Indian Affairs was passed into colonial control and "only reluctantly accepted by the Canadian authorities" in 1860.[22] Titley notes that the Canadas were the place where the "greatest body of

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[20] Titley, 2005, Op. Cit.:2.

[21] Adapted from "A new map of Upper & Lower Canada, 1794 [cartographic material]," Piccadilly, England: Publisher J Stockdale, 10 October 1794, National Archives of Canada, Alexander E MacDonald Canadiana Collection #512, Accession No. 80101/245 CA, Local Class No. 11001794 H3, R11981-185-0-E, Microfiche NMC93316, Access Code: 90, Copyright: Expired.

[22] Titley, 2005, Op. Cit.:1-4.

legislation affecting Indians was developed – legislation that was borrowed heavily by the new Dominion government" when it turned to formulating its own "Indian" policies.[23]

Despite earlier ties to France, many indigenous peoples of the Great Lakes allied with Britain against the United States during the War of 1812.[24] When the War of 1812 was quelled by British and indigenous forces, the utility of First Nations as military allies of the British dwindled.[25] Through the example of the Mississaugas' relocations in the region of Lake Ontario, Brian Osborne and Michael Ripmeester shed light on how European colonizers assigned a higher value on the skills, knowledge, military resources, and existing political order of North America's indigenous inhabitants when it was to the advantage of colonial powers: typically in areas of lesser European settlement and greater trade.[26] Consequently, it seemed less necessary for officials of the Indian Department to protect indigenous lands after the War of 1812.[27] Britain redirected its conquering gaze towards the remaining impediment to its colonial hegemony in North America: the very indigenous nationhood that once made military alliances so crucial to British victory.

As First Nations endured and continued to advance their claims even though they had ceased to be of immediate use as allies in war, the legitimacy of the colonizing settler state was threatened. The British colonial government engaged in dubious negotiations that justified sweeping appropriations of land and ended an irregular series of treaties across Canada. For indigenous peoples, the land that had been their home since "time immemorial" was now "defined by bundles of rights and values that were foreign to their ways and were defended by the courts."[28] Although abstract European conceptions of land ownership and legally-defined enfranchisement in the state had very real effects, they could not obliterate indigenous identities that are, by definition, woven of, and through, the land itself.

Paternalistic colonial Britain portrayed "Indians" as relics of a single savage culture that was dying away in the face of superior civilization. Whether characterized in colonizing minds as naive "noble savages" or violently heathen savages, reductive reasoning assumed that indigenous

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[23] Titley, 2005, Op. Cit.:1.
[24] Borrows, 1992, Op. Cit.:187.
[25] Titley, 2005, Op. Cit.:2.
[26] For an informative explanation of these shifting landscapes of power, through the example of the Mississaugas, see Osborne and Ripmeester. During the eighteenth century conflicts between France and Britain for control of North America, the "most powerful nation controlling the east end of Lake Ontario was not Britain or France, but the Mississaugas." Osborne and Ripmeester, 1995, Op. Cit.: 92; Osborne and Ripmeester, 1997, Op. Cit.:259-292.
[27] Titley, 2005, Op. Cit.:2.
[28] Cole Harris, 2004, Op. Cit.:177.

persons were incapable of governing their own affairs and that overtly indigenous political organization was a threat to order and good government. The struggles of indigenous communities as they grappled with disease, European settlement, and changes to long-standing cultural mores underpinned the belief that they were a disappearing "race" and those who remained should be isolated from the rest of Canadian society.[29] The colonial "solution" was geographical segregation: indigenous peoples should be quarantined until they either died out or were assimilated to British colonial culture by means of "the Bible and the plow."

Canada is not known for its revolutionary origins or for its frontier conquest of indigenous peoples. Within Canada, Brenna Bhandar finds that the negation of the "violence of colonial settlement and a refusal to call into question the legitimacy of the assertion of Crown sovereignty facilitate an understanding of Canada as a liberal-democratic advanced capitalist state, with its state-of-the-art Constitution and dominant ethos of pluralism and multiculturalism" and this "image of Canada masks systematic forms of discrimination and exclusionary practices and policies."[30] Nevertheless, as Hon. Aurélien Gill expressed to his parliamentary colleagues,

> You know as well as I do how the Americans dealt with Indians between 1830 and 1890 — with brutality, meanness and without respect. Canada was definitely less brutal, but were the results any different? Indian lands disappeared, natural resources were put under government trusteeship, reserves were established, treaties were not respected, the administration was unfair and fraudulent, powers were abused and our most fundamental rights were violated.[31]

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[29] The perception of indigenous persons as a dying "race" stemmed from the earliest days of contact with Europeans. Indigenous populations were devastated by European-borne diseases for which they had no biological resistance or immunity. Establishing any precise figure is problematic. Ubelaker provides a range of 1 213 475 to 2 638 900 for the indigenous population of North America in, or around, the year 1500. Aside from other factors that may cause inaccuracy, Olive Patricia Dickason observes that networks of interactions between First Nations enabled diseases to spread inland from the eastern shores of North America "far ahead of the actual presence of Europeans, decimating up to 93 per cent of Native populations." While the very first accounts of contact at the eastern seaboard describe healthy populations, later accounts from the period of inland movement during colonization describe seemingly empty lands. According to Dickason, archaeological evidence now makes it possible to contend "with growing conviction, if not absolute proof, that the pre-Columbian Americas were inhabited in large part to the carrying capacities of the land for the ways of life that were being followed." Douglas H Ubelaker, "Historical Perspectives on Estimation of the American Indian Population Size," *Variability and Evolution*, 2(3), (1993):85-92; Olive Patricia Dickason, *Canada's First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):3, 9, 203.

[30] Russel Lawrence Barsh also offers a useful critique. Russel Lawrence Barsh, "Aboriginal Peoples and Canada's Conscience," *Hidden in Plain Sight: Contributions of Aboriginal Peoples to Canadian Identity and Culture*, Eds. David R Newhouse, Cora J Voyageur, and Dan Beavon, (Toronto: University of Toronto Press, 2005): 272; Brenna Bhandar, "Anxious Reconciliation(s): Unsettling Foundations and Spatializing History," *Environment and Planning D: Society and Space*, 22, (2004):831.

[31] Hon. Aurélien Gill, "An Assembly for Aboriginal Peoples," *Canadian Parliamentary Review*, 31(3, Autumn), (2008):12.

The violation of fundamental rights was supported by the dichotomy constructed by colonial and Canadian governments between indigenous identities and adult participation in weaving the political fabric of the state.

Harris' observation that the division between British Columbia's reserves and the rest of the province became the principal line on its map offers insight into the relationships between societal rifts and historical geography.[32] Put forward by Sir George Murray, Britain's Secretary of State for War and the Colonies, the formal adoption of a British colonial civilization policy in 1830 for the "gradual civilization and christianization of the Indians of Upper Canada" rested on principles of "Indian protection, based on the Royal Proclamation; improvement of Indian living conditions; and Indian assimilation into the dominant society."[33] The policy involved three systemic pillars: ceding land through treaties, Indian reserves governed by Indian Agents, and "Indian" schools.[34] Since confinement on reserves was vital to the 1830 civilization project, treaties had to be made in areas such as Manitoulin Island where indigenous settlements lay outside of previously treated territories.[35] For the legislators that created them, reserves were impermanent sites where the policy of assimilation would be implemented. Indian Agents and missionaries supervised the settlement of indigenous communities into villages where "Indians" were subjected to instruction designed to instill in them the idealized characteristics associated with British settlers: self-sufficiency, Christianity, loyalty to the Government, individual property ownership, and the agrarian economy.[36] Throughout Canada, reserves were places of exception as their borders hemmed in indigenous peoples who, although claimed as subjects by the British Crown, were not considered fit to be at large in lawful society.

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[32] Cole Harris, 2004, Op. Cit.

[33] John Leslie, "Indian Act: An Historical Perspective," *Canadian Parliamentary Review*, 25 (2, Summer 2002):24; John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):11; Robert J Surtees, "Treaty Research Report: Manitoulin Island Treaties," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.

[34] Leslie, 2002, Op. Cit.:24; Milloy, 1999, Op. Cit.:16-17.

[35] Robert J Surtees, "Treaty Research Report: The Robinson Treaties (1850)," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.

[36] John Richards, "Reserves Are Only Good for Some People," *Journal of Canadian Studies*, 35(1), (2000):190-202; Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples.* Volume: II: Restructuring the Relationship, Part I, (Ottawa: Minister of Supply Band Services Canada, 1996).

3.2 Manitoulin: Place of International Summit

Manitoulin Island has long been a place of international interaction. The Great Manitoulin chain forms a "bridge of sorts" between the Bruce Peninsula and the head of Lake Huron.[37]

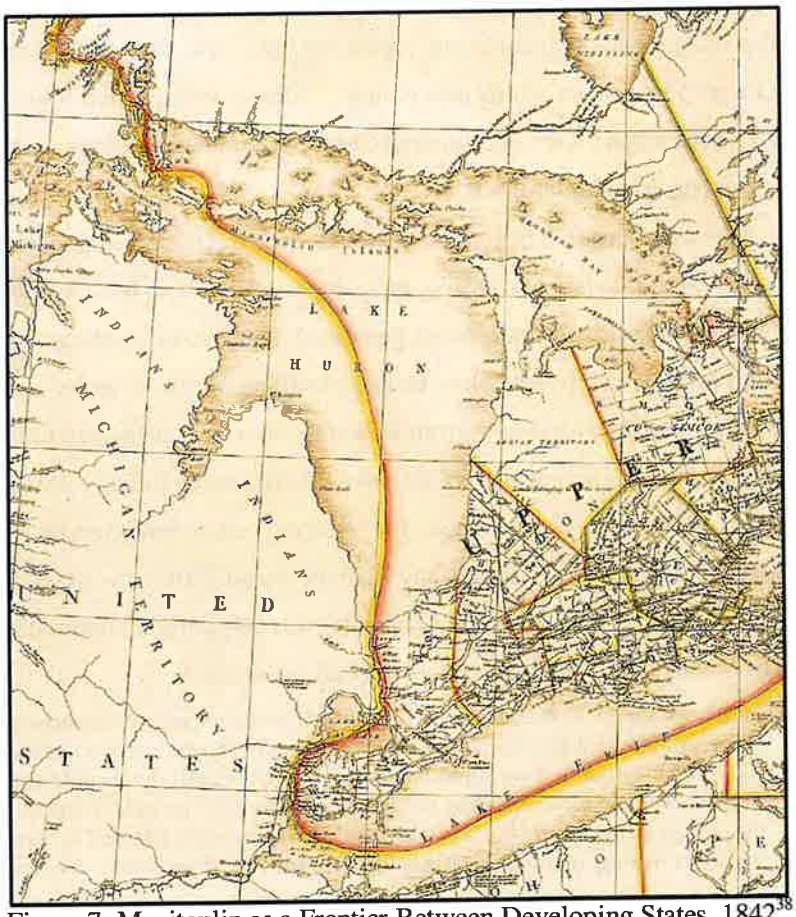

Figure 7: Manitoulin as a Frontier Between Developing States, 1842[38]
Manitoulin is illustrated in this 1842 map within the regional context of the international border. Upper Canadian settlement is expanding into the frontier of Indian Lands.

Overlapping nationalisms have conferred a legacy of controversy on the historical-geography of Manitoulin Island. Manitoulin is part of the large indigenous territory of the Three Fires Confederacy: an Algonquian alliance of the Odawa, Ojibwa, and Potawatomi that supersedes

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[37] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[38] Cropped and enlarged to show detail, adapted from "A map of the province of Upper Canada...with the counties adjacent from Quebec to Lake Huron...London. Published by Jos. Wyld...1842. [cartographic material]," National Archives of Canada, R12567-123-1-E, Box 2000215522, Accession No. 76701/383, Local Class No. H2/400/1842 (Copy 1), Access Code: 90, Copyright: Expired.

provincial, state, and national borders. The Manitoulin Island chain occupies an important place in the colonial expansion of Canada and the development of Indian policy.

3.2.1 Sir Francis Bond Head's Indian Hospice?

Manitoulin Island was an early site of assimilationist experimentation. When Murray's 1830 plan of "gradual civilization and christianization" was first put forward, certain bands were chosen for a "pilot project of this new policy."[39]After colonial officials gauged "progress" in an initial five-year project with five hundred Chippewas in the Lake Simcoe area, a new project site was to be opened on Manitoulin Island.[40]

Although Canadian history attributes the idea of Indian removal to Manitoulin to Sir Francis Bond Head, in his own telling, there appears already to have been advanced discussion of setting Manitoulin aside for indigenous persons. When Head was obligated to journey to Manitoulin early in his governorship, he lacked sufficient time to make new plans despite having being instructed to formulate new arrangements.[41] Head was dismayed to find that his predecessor had "with a view to civilize and Christianize the Indians who inhabit the country north of Lake Huron" already arranged for "erecting certain buildings on the great Manatoulin" and presaged the distribution of presents from the island.[42] Borrows asserts that the regular colonial-First Nations "distribution of presents" was relocated to Manitoulin Island in 1836 in order to promote Indian settlement there.[43] Head maintained,

> I did not approve of the responsibility, as well as the expense of attracting, as had been proposed, the wild Indians from the country north of Lake Huron to Manatoulin, yet it was evident to me that we should reap a very great benefit if we could persuade these Indians, who are now impeding the progress of civilization in U. Canada, to resort to a place possessing the double advantage of being admirably adapted to *them*, (inasmuch as it affords fishing, hunting, bird-shooting and fruit,) and yet in no way adapted to the

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[39] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[40] Ibid:2, Quoted from British Parliamentary Papers, Vol. 12. Correspondence and other Papers relating to Canada and to the Indian Problem Therein, 1839; "Communications and Despatches Relating to Recent Negotiations with the Indians and Arrangements for the Future Settlement of the Tribes in this Province," (Toronto: Printed by order of the House of Assembly at the Office of the British Colonist, 1838); Bond Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[41] Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.
[42] Ibid.; Despatch of Sir FB Head to Lord Glenelg enclosing the foregoing treaties, 20 August 1836, (Toronto), "Ontario – Copy of 'Sir Francis Bond Head's Treaty' Signed at Manitowaning in 1836 in the Matter of the Islands on the North and East Shores of Lake Huron. Copies of Robinson Superior, Robinson Huron and Lake Sincoe [sic] Treaties and Correspondence, Reports, Memoranda and Claims Relating to These Treaties," 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume 2848, File: 175,258, Access Code: 90.
[43] Borrows, 1992, Op. Cit.:188

> white population… I felt convinced that a vast benefit would be conferred both upon the Indians and the Province by prevailing upon them to migrate to this place.[44]

Perhaps the mineral wealth of the north shores of Lake Huron and Lake Superior had already been discovered when the first proposal of drawing First Nations from the north, instead of Head's proposed south-eastern catchment, was made.

While on Manitoulin Island, Head, determining that it "belong[ed] (under the crown) to the Chippewa and Ottawa Indians, and that it would, therefore, be necessary to obtain their permission before we could avail ourselves of them for the benefit of other tribes," set out a proposal in front of the group of fifteen hundred First Nations persons assembled for presents.[45] Head conducted "private interviews" with the Chiefs and scheduled a Grand Council at Manitowaning on 9 August 1836 to discuss his particular plan for the island.[46] In keeping with international norms involving negotiations between representatives of high stature, on the day of the Grand Council, the indigenous peoples had already met to establish their position and appoint "one of their greatest orators," Sigonah, to speak with Head.[47] Head proposed that indigenous lands be ceded to the Crown in exchange for the dedication of the Manitoulin chain for the "Indians" of Upper Canada.[48] Head professed satisfaction in the "calm deliberate manner in which the Chief gave, in the name of the great Ottawa tribe, his entire approval."[49] Head was prepared with a memorandum, not a formal land cession document, to be signed by the Chiefs; however, when he forwarded his document to Lord Glenelg, Britain's Secretary of State for War and the Colonies, he made it clear that wampum had been given along with the agreement and that, in addition to government officials, Church of England, Catholic, and Methodist clergy witnessed the accord.[50] Head underscored the wampum belt because he realized its importance in First Nations negotiations as a formal pledge "handed down from father to son, with an accuracy and retention of meaning which is quite extraordinary."[51] In terms of British colonial policy, Head conceded that the document was "not in legal form; but, dealings with the Indians have been only in equity, and… was therefore anxious to shew that the transaction had been equitably

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[44] Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.
[45] Ibid.; Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[46] Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.
[47] Ibid.
[48] Surtees also explains that a second group, the Ojibwa of the Bruce Peninsula, would move north of the Saugeen River. Surtees, "Manitoulin Island Treaties," 1986; Head to Glenelg, 20 August 1836, "Communication and Despatches," Op. Cit.
[49] Ibid.
[50] See Appendix B for the Manitoulin Document. Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[51] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.

explained to them."[52] Although they did not necessarily meet the highest British legal standards, Surtees argues that Head "wished to have the two memoranda considered as legal land surrenders… these two speeches have taken on the status of actual treaties" as the *Manitoulin Island Treaty* of 1836.[53]

Head's motive was to procure land for the colonial government.[54] By his own admission, Head's document was meant to have two outcomes: segregated "Indian" settlements and the "acquisition of their vast and fertile territory… hailed with joy by the whole Province."[55] If all indigenous lands were reduced to the confines of Manitoulin Island, massive surrenders would make a great deal of land available as settlement advanced westward.[56] While Head boasted to his superior that the signing of the Manitoulin Document at a "General Council held expressly for the purpose, made over to me 23,000 Islands" and that the "Saugeen Indians also voluntarily surrendered to me a million and a half acres of the very richest land in Upper Canada," he did not put the document in quite the same light to the First Nations.[57] He sheepishly half-confessed, "it may appear that the arrangement was not advantageous to the Indians, because it was of such benefit to us" and failed to realize the deep meaning of indigeneity when he pontificated, "but it must always be kept in mind that however useful rich land may be to *us*, yet its only value to an Indian consists in the game it contains."[58] Thus, Head rationalized that First Nations had weak claims to land where settlement had diminished stocks of game.

In his Manitoulin Document, calling the First Nations who negotiated so eloquently "red children" of the "great Father," the British monarch, Head paternalistically framed the *Proclamation of 1763* as an outdated artifact of beneficent protection of First Nations that could not be sustained in the face of the "unavoidable increase of white population, as well as the progress of civilization."[59] By 1836, it had "become necessary that new arrangements should be

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[52] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[53] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[54] Ibid.
[55] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[56] Titley, 2005, Op. Cit.:3.
[57] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[58] Ibid.
[59] "The Chippewa, Ottawa and Suaking Indians – Provisional Agreement for the Surrender of the Manitoulin Islands and the Islands on the North shore of Lake Huron and also of the Sauking Territory – IT 120 1836/08/09," 1836, National Archives of Canada, RG10: Department of Indian Affairs, R216-79-6-E: Treaties and Surrenders, Volume: 1844/IT120, Access Code: 90; Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.

entered into for the purpose of protecting… from the encroachment of whites."[60] Head illustrated the problem:

> In all parts of the world, farmers seek for uncultivated land as eagerly as you, my red children, hunt your great forests for game. If you would cultivate your land, it would then be considered your own property; in the same way as your dogs are considered among yourselves to belong to those who have reared them; but uncultivated land is like wild animals.[61]

Although Head tacitly acknowledged Aboriginal title to Manitoulin by confirming the need for cession to Lord Glenelg, in his document to the First Nations, Head put their legal claim to territory on a less firm footing. Head portrayed the legal geography of both Manitoulin and the north shore of Lake Huron as "alike claimed by the English, the Ottawas and the Chippewas."[62] Since the Manitoulin chain "might be made a most desirable place of residence for many Indians who wish to be civilized as well as to be totally separated from the Whites," Head offered, "your Great Father will withdraw his claim to these Islands, and allow them to be applied for that purpose."[63] Moreover, the question at the end of Head's document was not put as a clear cession to the Crown under the *Proclamation of 1763*. Rather, Head asked, "Are you, therefore… willing to relinquish your respective claims to these Islands, and make them the property (under your Great Father's control) of all Indians whom he shall allow to reside on them?" and requested that First Nations put their marks to the document.[64] Especially with British control hidden behind parentheses, Head's proposal might easily have been construed as British cession to pan-Aboriginal title. From what was represented to them as an uncertain future, at the very least, the First Nations would have an additional documented right to the land.[65]

3.2.2 Diplomacy and Despair

Although Lord Glenelg informed Head that King William IV approved his plans for Manitoulin Island and wished its indigenous inhabitants to be under his care, the King directed Glenelg to "signify his express injunction that no measure should be contemplated which may afford a reasonable prospect of rescuing this remnant of the aboriginal race, from the calamitous

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[60] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[61] "The Chippewa, Ottawa and Suaking Indians," 1836, Op. Cit.; Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.; "Ontario – Copy of 'Sir Francis Bond Head's Treaty'," Op. Cit.
[62] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[63] Ibid.
[64] Ibid.
[65] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

fate which has so often befallen uncivilized man, when brought into immediate contact with the natives of Europe."[66] William IV would "with highest interest" receive Head's suggestions regarding the "prospect of their being reclaimed from the habits of savage life, and being enabled to share in the blessings of Christian knowledge and social improvement."[67] The King thought it advisable that indigenous persons be geographically restrained to the limits of Manitoulin Island; however, he did not predict their survival. The tenor of Head's correspondence soon darkened.

Figure 8: His Excellency Sir Francis Bond Head, 1837[68]

When Sir Francis Bond Head corresponded with the Colonial Secretary in November 1836, he did so in a tone of despair, writing that the fate of the indigenous peoples of "America, the real proprietors of its soil, is, without any exception, the most sinful story recorded in the history of the human race."[69] Head had completed a tour of inspection in which he purported to have visited every Indian settlement in Upper Canada "with one or two trifling exceptions"

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[66] Glenelg to Head, 5 October 1836, "Communication and Despatches," Op. Cit.
[67] Ibid.
[68] "His Excellency Sir Francis Bond Head," 1837, National Archives of Canada, Peter Winkworth Collection of Canadiana, R9266-5-0-E, Item No. 3154, Access Code: 90, Copyright: Expired.
[69] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.; Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

making it his "duty to enter every shanty or cottage, being desirous to judge, with [his] own eyes, of the actual situation of that portion of the Indian population which is undergoing the operation of being civilized."[70] Although Head used movingly romantic language, he did not shy away from the reality that imperial powers "were obtaining possession of their country by open violence, the fatal result of unequal contest was but too easily understood."[71] For Head, a sense of poignancy was derived from the futility that, "now that we have succeeded in exterminating their Race from vast regions of land," assimilative projects, and any contact, seemed

> sure to prove fatal to the Red Man… if we attempt to christianize the Indians, and for that sacred Object congregate them in villages of substantial log houses, lovely and beautiful as such a theory appears, it is an undeniable fact, to which unhesitatingly I add my humble testimony, that as soon as the hunting season commences, the men (from warm clothes and warm housing have lost their hardihood) perish, or rather rot, in numbers, by consumption; while as regards their women, it is impossible for any accurate observer to refrain from remarking, that civilization, in spite of the pure, honest, and unremitting zeal of our missionaries, by some accursed process has blanched their babies faces. In short, our philanthropy, like our friendship, has failed in its profession; producing deaths by consumption, it has more than decimated its followers; and under the pretense of eradicating from the female heart the errors of a pagan's creed it has implanted in their stead the germs of Christian guilt.[72]

Head avowedly denied reports that civilization was successful and concluded that

> every person of sound mind in this country who is disinterested in their conversion, and who is acquainted with the Indian character, will agree,-
> 1. That an attempt to make farmers of the Red Men has been, generally speaking, a complete failure.
> 2. That congregating them for the purpose of civilization has implanted many more vices than it has eradicated; and, consequently,
> 3. That the greatest kindness we can perform towards these intelligent, simple-minded people, is to remove and fortify them as much as possible from all communication with the Whites.[73]

Despite the more buoyant rhetoric of his Manitoulin Document, for Head, the estimated 6507 indigenous inhabitants of Upper Canada should be funneled northwest where the natural limits of Manitoulin Island would demarcate something of an Indian hospice for the single "race" that he believed was dying out.[74]

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[70] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[71] For an examination of Head as a Romantic primitivist, see Theodore Binnema and Kevin Hutchings, "The Emigrant and the Noble Savage: Sir Francis Bond Head's Romantic Approach to Aboriginal Policy in Upper Canada," 1836-1838, *Journal of Canadian Studies*, 39(1, Winter), (2005):115-138; Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[72] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[73] Ibid.
[74] Titley, 2005, Op. Cit.:3.; Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.

The "Committee of the Executive Council of Lower Canada respecting the Indian Department" rejected Head's critique of the civilization project because they saw no inherent characteristic "to unfit" an indigenous person from "rising to a level with his brethren of the European race."[75] They attributed the negative conditions observed by Head to either neglect on the part of paternalistic assimilators who "should have watched over his improvement" or a "vicious system positively calculated to depress and degrade him."[76] Despite casting indigenous persons as victims, the Committee also noted that "[v]ices attributed to the Indians as the Result of attempts to civilize them have been none other than have ever been found even in the most savage and uncultivated forms of life."[77] The Committee maintained that First Nations, given the "opportunity" of civilization, exhibited a "capacity for the ordinary pursuits and arts of life."[78] Lord Glenelg concurred that segregation would enable "Indians" to move towards assimilation without the detrimental effects of neighbouring frontier settler communities.[79] Lord Glenelg and the British Treasury approved Head's land proposal.[80] As massive land surrenders were secured for "Indian lands" outside of Manitoulin Island in preparation for the removal, the vociferous protests of First Nations peoples and missionaries caused the Colonial Office to withdraw the Manitoulin Island strategy and resume a policy of gradual assimilation by 1838.[81]

Agents of the colonial government proceeded with a different version of the Manitoulin project. A fledgling government settlement was established on Indian lands at Manitowaning in 1838.[82] From 1839 to 1844, the Government spent "upwards of $30,000" in developing Manitowaning as an administrative centre of Indian Affairs with

> some 40 Indian houses, a large frame store, a saw-mill, four large houses for the agent, English clergyman, doctor, and school-master; also a blacksmith's, carpenter's, and cooper's shops; a large English church was also built, under the hope that a large number of Indians could be congregated there, and in some degree civilized and taught industrious pursuits.[83]

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[75] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81] Titley, 2005, Op. Cit.:3
[82] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[83] CE Anderson, "Report on the Free Port of Sault Ste. Marie," October 1864, *Reports of the Inspectors of the Free Ports of Gaspe and Sault Ste. Marie, Together with Certain Statistical Tables of Imports*, Sessional Papers of the Province of Canada, (Québec: Hunter, Rose & Co., 1865):39-40.

Nonetheless, as a government presence for the purposes of Indian assimilation, Manitowaning was not impressive.[84] Government civilizers vied with religious missionaries as the church of state, the Anglican Church, was rivaled by Jesuit missionaries who settled in Wikwemikong village.[85]

3.2.3 The Mica Bay Uprising: Historical-Geographical Contexts of the *Robinson-Huron* and *Robinson-Superior Treaties*

Manitoulin's geographical context influenced international relationships as First Nations and imperial powers fought for survival, territory, and legal rights. The Ojibwa bands beyond Manitoulin used points on the island as short-term camp and meeting places.[86] On the northern shores of Lake Huron, as Osborne and Ripmeester found in the Mississauga's odyssey in more southerly realms, colonial expediency was the catalyst for the legalized geographical control of indigenous peoples.[87] Where the fur trade had once been the major commercial indigenous-colonial relationship, mining resources put additional pressure on the issue of Indian land cessions.[88] In his 1880 historical compilation, Alexander Morris straightforwardly relates the colonial reasoning that, because of the "discovery of minerals, on the shores of Lakes Huron and Superior, the Government... deemed it desirable, to extinguish the Indian title."[89] Nonetheless, this colonial practicality was less pragmatic when situated within the realities of indigenous peoples.

Robert Surtees suggests that prospecting on the north shore of Lake Huron for mineral resources was "regarded by the Indians as trespassing" and attempts at mineral exploration motivated letters of complaint to the government.[90] According to Surtees, in 1846, Chief Shinguakouse (Shinguacouse) of the Garden River First Nation threatened a land surveyor.[91] As he petitioned the Governor General in June 1846, sending his missive through the Indian Agent at

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[84] An 1856 Special Commission for the investigation of Indian Affairs found that Indians were not present at church services at Manitowaning and its generally ineffective school was infrequently attended although Rev. Mr. Jacobs had some success in running an evening school. Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[85] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[86] Ibid.
[87] Osborne and Ripmeester, 1995, Op. Cit.
[88] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[89] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on Which They Were Based, and Other Information Related Thereto*, (Toronto: Prospero Books, 2000) Reprinted from 1880 Belfords Clark and Company edition: 16.
[90] Surtees, "Robinson Treaties," 1986, Op. Cit.
[91] Ibid.

Manitowaning on Manitoulin Island, Shinguakouse cited his military service with the British during the War of 1812 and asserted that he had been promised that he could live on his land without outside incursions.[92] Although it is not clear whether Shinguakouse possessed a wampum belt or other forms of agreements, in 1836 Sir Francis Bond Head recognized that many wampum belts made by British Generals with First Nations allies during "the American wars," had been "preserved... entrusted to the keeping of the great orator Sigonah," with whom Head negotiated on Manitoulin Island in 1836.[93] Head recognized that "in every sense these hyeroglyphics are moral affidavits" supported by ceremonial present-giving which "corroborates the testimony of the wampums."[94] Head's understanding of the legal weight of wampum belts did not suit later colonial strategies.

In July 1847, the Indian Department made a vain attempt at convincing Shinguakouse to relocate his band from the Garden River village, which had been identified as a potential mineral location, to Manitoulin Island.[95] Perhaps with the Haudenosaunee period in mind, by November 1847, Commissioner of Crown Lands Denis-Benjamin Papineau denied the legally-established claims of the north shore peoples of Lake Huron and Lake Superior because, in his estimation, they could not be considered original inhabitants since they did not live on the lands until the end of the Seven Years' War in 1763 and they were too dispersed to be recognized as an organized nation with a right to territory.[96] In June 1848, having refused to relocate, Shinguakouse formed a deputation to travel to Montreal to request the cessation of mining activities.[97] Tensions mounted when the deputation returned to find that their Garden River village had been sold as a mining location.[98] Once again, Shinguakouse journeyed to Montreal in July 1849 and spoke with Lord Elgin.[99]

In September of the following year, Lord Elgin ordered that Alexander Vidal and Thomas Anderson embark on a recognizance mission in preparation for securing indigenous land

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[92] Shinguakouse fought alongside British forces at Detroit, Queenston Heights, and Moraviantown. Surtees, "Robinson Treaties," 1986, Op. Cit.; Janet E Chute, "Shingwaukonse: A Nineteenth-Century Innovative Ojibwa Leader," *Ethnohistory*, 45 (1, Winter), (1998):70-71.
[93] Head to Glenelg, 20 November 1836, "Communication and Despatches," Op. Cit.
[94] Ibid.
[95] Rhonda Telford, "Aboriginal Resistance in the Mid-Nineteenth Century: The Anishnabe, Their Allies, and the Closing of the Mining Operations at Mica Bay and Michipicoten Island," *Blockades and Resistance: Studies in Actions of Peace and the Temagami Blockades of 1988-89*, Eds. Bruce W Hodgins, Ute Lischke, and David T McNab, (Waterloo, Ontario: Wilfred Laurier University Press, 2003):73.
[96] Surtees, "Robinson Treaties," 1986, Op. Cit.
[97] Telford, 2003, Op. Cit.:74.
[98] Ibid:74.
[99] Ibid:75.

cessions. When the members of this mission arrived in Manitowaning, Manitoulin Island, First Nations were warned to be prepared for an upcoming round of treaty talks.[100] In general, unproductive negotiations "left the Anishinabe on both lakes on bad terms."[101] While the colonial government had yet to receive the *Vidal-Anderson Report*, an uprising occurred.

Stories of this conflict, emanating from broken promises made on Manitoulin Island, differ. According to Surtees, the November 1849 Mica Bay "Indian uprising" took place when a "band of Indians and Metis, led by the white entrepreneur Allan Macdonell" journeyed to Mica Bay from Sault Ste. Marie, "attacked the mining installations of the Quebec Mining Company," and demanded surrender.[102] Rhonda Telford places the leadership of this resistance with Shinguakouse and Nabenagoching, who led a group to "forcibly shut down the operations" as a "demonstration of Ojibwa ownership of and beneficial interest in the subsurface."[103] Indigenous peoples in Ontario have used products of the subsurface of the land, such as copper, for thousands of years.[104] The Crown would not recognize indigenous mining knowledge or rights.[105]

After a hundred-rifle force was sent against the uprising and warrants were issued, Shinguakouse, Nabenagoching, and Macdonell were amongst those arrested in December 1849 and sent to Toronto for trial.[106] Macdonell's charge of "forcible possession" was heard, and rejected, in the home of family friend Chief Justice JB Robinson.[107] While in detention, Shinguakouse and Nabenagoching "demanded compensation" from government mineral revenues.[108] Telford's assertion that Macdonell's association with the Robinson family "enabled both him and his Ojibwa friends to avoid lengthy punishment" is supported by the release of the imprisoned indigenous participants and the appointment of William Benjamin Robinson, brother of the Chief Justice, to negotiate treaties on the north shores.[109]

The Mica Bay Uprising took place on what was still very much a north-western frontier to the British colonial government. Following the uprising, mining interests warned the government that treaties must be secured quickly in order to prevent a second uprising to the

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[100] The comprehensiveness of this mission is questionable because it coincided with an epidemic and was undertaken at an insalubrious time of year. Surtees, "Robinson Treaties," 1986, Op. Cit.
[101] Telford, 2003, Op. Cit.:78.
[102] Surtees, "Robinson Treaties," 1986, Op. Cit.
[103] Telford, 2003, Op. Cit.:71, 78.
[104] Ibid:71.
[105] Ibid:79.
[106] Surtees, "Robinson Treaties," 1986, Op. Cit.; Telford, 2003, Op. Cit.:79.
[107] Telford, 2003, Op. Cit.:79.
[108] Ibid.
[109] Ibid.

detriment of Bruce Mines.[110] The Mica Bay Uprising foreshadowed later First Nations and Métis resistance farther into the Canadian North-West and had a great impact on colonial policy. Surtees reasons that the Governor General "apparently saw a connection" between the uprising and land cession.[111] With valuable mineral exploration already in progress, and the power of multifaceted indigenous resistance so clearly demonstrated, it was urgent that treaties be established with the indigenous peoples of Lake Huron and Lake Superior. Although Lord Elgin considered the Mica Bay resisters' claims dubious and judged that they had been led astray into "'violent courses by the evil counsels of unprincipled white men'," he regretted that Aboriginal title had not been extinguished before mineral licenses were granted.[112]

Despite its untimeliness, the government report that resulted from the Vidal-Anderson preparatory mission achieved recognition of the rights of First Nations in the area north of Lake Huron. It was established that indigenous rights to land were "'derived from their forefathers, who have from time immemorial hunted upon it'" and that indigenous claims to these desirable territories were "'unquestionably as good as that of any of the tribes who have received compensation for the cession of their rights in other parts of the Province; and therefore entitle[d] them to similar remuneration.'"[113] Therefore, despite Papineau's earlier assessment, it was incumbent on the government to negotiate treaties with indigenous peoples holding Aboriginal title.

Special Commissioner William Benjamin Robinson, the first person outside of the Indian Department to be appointed to negotiate a treaty, began the treaty process in 1850.[114] Robinson "was expected to save the government from further embarrassment in the northwest" and "buy as much land as possible, but not settle for less than 'the north shore of Lake Huron and the mining sites along the eastern shore of Lake Superior.'"[115] The *Robinson Treaties* were the prototype for all subsequent historical treaties in Canada.[116]

According to Surtees, Lord Elgin's promise of an official pardon for Chief Shinguakouse and other Mica Bay uprising participants eased relations prior to negotiations; however, Telford

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[110] Telford, 2003, Op. Cit.:79.
[111] Surtees, "Robinson Treaties," 1986, Op. Cit.
[112] Ibid.
[113] Ibid.
[114] Ibid.
[115] Ibid.
[116] Morris, 2000, Op. Cit.:285.

dates the pardon after the signing of the treaties.[117] Independence was also something of an incentive as Robinson emphasized usufructuary rights to hunting and fishing with the argument that the Canadian Shield was not attractive to settlers and, therefore, usufructuary rights would not be impinged upon as they had been by the settlement of eastern Upper Canada.[118]

Although Robinson's task was to secure cessions on both Lake Huron and Lake Superior, the Lake Superior Bands signed the treaty on 7 September 1850 while Shinguakouse and the Lake Huron Bands wished to continue negotiations.[119] Shinguakouse calculated that the treaty annuity payment should be higher than what had been proposed and he also wanted to ensure that a reserve be created "for the half breeds at the rate of 100 acres per head."[120] Despite refusing because he had been instructed to "treat with Indians, not whites," Robinson posited that the "half breeds… could be given land on the Indian reserves if the band agreed."[121] Shinguakouse and the Lake Huron Chiefs signed the treaty on 9 September 1850 and ceded the

> Eastern and Northern Shores of Lake Huron, from Penetanguishine to Sault Ste. Marie, and thence to Batchewanaung Bay, on the Northern Shore of Lake Superior, together with the Islands in the said Lakes opposite to the shores thereof, and inland to the height of the land, which separates the territory covered by the charter of the Honorable Hudson Bay Company from Canada: as well as all unconceded lands within the limits of Canada west to which they have any just claim.[122]

Land cessions in the *Robinson Treaties* were made "save and except the reservations" outlined in the treaties themselves.[123] Reserve lands were held in common for the benefit of the band.[124]

For the most part, the chiefs who signed the 1850 *Robinson Treaties* were "allowed to choose" their own reserves "which were usually locations of longstanding usage such as a

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[117] Telford records that Shinguakouse was pardoned for his role in the Mica Bay Uprising in May 1851. Surtees, "Robinson Treaties," 1986, Op. Cit.; Telford, 2003, Op. Cit.
[118] Surtees, Robinson Treaties, 1986, Op. Cit.
[119] Ibid
[120] Ibid.
[121] Despite Robinson's indication, in practice, "Half-breeds" were forced to choose to be identified as either "Indian" or non-Indian. Ibid.
[122] "In the Matter of the Arbitration Between The Dominion, the Province of Canada, and the Provinces of Ontario and Quebec: Statement of Case of the Dominion on Indian Claims Arising Out of the 'Robinson Treaties'," "Terms of Agreement of the Robinson Huron Treaty Signed on the 9th of September 1850," 1850-1893, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2545, File: 111,834, Access Code: 90.
[123] "Robinson Huron Treaty – Surrender by the Ojibewa Indians inhabiting the North Shore of Lake Huron – IT 148," 1850/09/09, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1844/IT148, Access Code: 90; "Terms of Agreement of the Robinson Huron Treaty," Op. Cit.
[124] Ibid.

summer encampment where limited agriculture was practiced."[125] While agriculture coincided with Indian Affairs' assimilation plans, active indigenous involvement in mining did not.

Figure 9: Reducing Indian Lands to the Garden River Reserve[126]
Indigenous lands were reduced to the reserves established through treaty negotiations.

[125] Surtees, "Robinson Treaties," 1986, Op. Cit.
[126] Adapted from "L.H. No.23. Plan of Indian Reserve situate at Garden River, North Shore of Lake Huron. Being No.14 under the Treaty of Septbr. 9th 1850. [with description] signed Jno. Stoughton Dennis: L.S., Weston, 14th May, 1853. [cartographic material]," National Archives of Canada, Copy No.1 from Department of Indian Affairs, Survey Records, No. 420A, Box: 2000222726, Local Class No. H2/440/Garden River (IR)/1853, Access Code: 90, Copyright: Expired.

As they had been from before the conflict exacerbated by mineral exploration began, differing understandings of the land are at the heart of these agreements. The financial and administrative oversight of the Indian Department was enshrined in the *Robinson Treaties*' requirement that any future sales of minerals, "valuable productions," or lands within reserves would take place through Indian Affairs "for their sole benefit, and to the best advantage" yet the treaties also stipulated that this would occur at the "request" of the indigenous parties.[127] Within reserves, the text of the *Robinson-Huron Treaty* makes Indian Affairs the middlemen rather than the instigators of economic development.

It may appear that Indian Affairs' control of mining extraction outside of reserves was understood when the indigenous signatories agreed that they would not "at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the Territory hereby ceded."[128] Nevertheless, this clause, and the treaty itself, arose from concerns about violence following the recent uprising. Now that the parties had finally engaged in treaty negotiations, pledges of peace were appropriate. Moreover, searching and exploring is not equivalent to extraction. If the procedure for mineral extraction were the same as that applied to the products of the reserve, it would only happen at the instigation of all of the First Nations who shared this territory.

In a sense, in this critical negotiation between differing nations, both sides appeared to be making some concessions. On the part of the Crown, it was acknowledged that indigenous peoples did possess Aboriginal title that must be approached through treaty-making rather than disregarded through unlawful frontier incursions. On the part of indigenous negotiators, it was implicitly acknowledged that the British used the surface boundary delineation of rights to minerals rather than holistic indigenous understandings based on minerals being part of the land itself. While reserve lands would become the sole realm of each band to settle on, products of the lands outside the reserves, such as animals to "hunt over the Territory" and fish swimming beneath the surface of the water, were still their "full and free privilege."[129] From this perspective,

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[127] "Terms of Agreement of the Robinson Huron Treaty," Op. Cit.; "Copy of the Robinson Treaty Made in the Year 1850 with the Ojibewa Indians of Lake Huron Conveying Certain Lands to the Crown," Reprinted from the edition of 1939 by Roger Duhhamel, Queen's Printer, Ottawa, 1964, Indian and Northern Affairs Canada, Cat. No. Ci 72-1264; Morris, "Appendix: The Robinson Huron Treaty," 2000, Op. Cit.:305-306.
[128] "Ontario – Copy of 'Sir Francis Bond Head's Treaty'," Op. Cit.
[129] Telford asserts that the exception to this clause that allowed the provincial government, "from time to time," to sell or lease parts of this larger territory "was not discussed in the negotiations, nor would the Ojibwa have agreed to it. It was added afterwards and should not be a binding part of the treaty." Telford, 2003, Op. Cit.: 82.; "Ontario – Copy of 'Sir Francis Bond Head's Treaty'," Op. Cit.

since "minerals were not expressly surrendered, they did not pass to the Crown."[130] Divergent interpretations of the legal status of negotiations, the texts of treaties, and the vertical and horizontal geographical bounds of agreements endured while the Manitoulin Island chain, on the blurry margins of this debate, continued to be used as a place of international summit.[131]

3.3 *The Manitoulin Island Treaty*: The Settlement of Manitoulin Lands and Waters

In an August 1861 *Order in Council*, the Commissioner of Crown Lands directed that Manitoulin Island be surveyed and divided into townships in preparation for colonial settlement.[132] The waters of the Manitoulin Island chain had already been encroached upon by "white fishermen who were actually the first whites to penetrate the Manitoulin frontier" and fishing leases had already been granted.[133] As Douglas Harris demonstrates, Canadian colonial authorities "justified imposing state law on the Native fisheries by finding an absence of law."[134] The premature leases in Manitoulin waters were "clearly an infringement of Indian rights, and the natives registered their dissatisfaction by harassing those whites who exercised their licenses."[135] When the provincial Commissioner of Fisheries, Mr. William Gibbard, advised the village of Wikwemikong in July 1859 that they would have to purchase their own indigenous usufructuary fishing rights by auction, the chiefs protested.[136]

By 1861, the Wikwemikong and West Bay (M'Chigeeng) First Nations had resolved against the colonial settlement of Manitoulin Island.[137] When commissioners arrived in Manitowaning to negotiate a treaty to cede the land, the indigenous peoples were told that Head's 1836 agreement was based on an estimate that nine thousand "Indians" would relocate to Manitoulin Island on allotments of twenty-five acres per family.[138] In 1863, the *Globe* estimated

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[130] Telford, 2003, Op. Cit.:82.
[131] Manitoulin Island was again a meeting place when, as Robinson was returning from this treaty process, on 16 September 1850, Lake Simcoe Chiefs "Yellowhead" and "Snake," with Beausoliel Island Chief Aisence, were there to meet him and register claims to lands near the Severn River. In registering these claims, the Robinson-Superior tract was put into question and an agreement was not re-established until the *Williams Treaty* of 1923. Telford, 2003, Op. Cit.:82-84; Morris, 2000, Op. Cit.:20; Surtees, "Robinson Treaties," 1986, Op. Cit.
[132] Surtees, "Robinson Treaties," 1986, Op. Cit.
[133] Ibid.
[134] Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia*, (Toronto: University of Toronto Press, 2001):4.
[135] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[136] Ibid.
[137] Ibid.
[138] Ibid.

Great Manitoulin's entire "Indian" population at approximately twelve hundred to fourteen hundred persons.[139] Since relocation had not occurred at the desired scale, the government averred that indigenous peoples had "'not fulfilled their part of the contract'" and, thus, it was rendered invalid.[140]

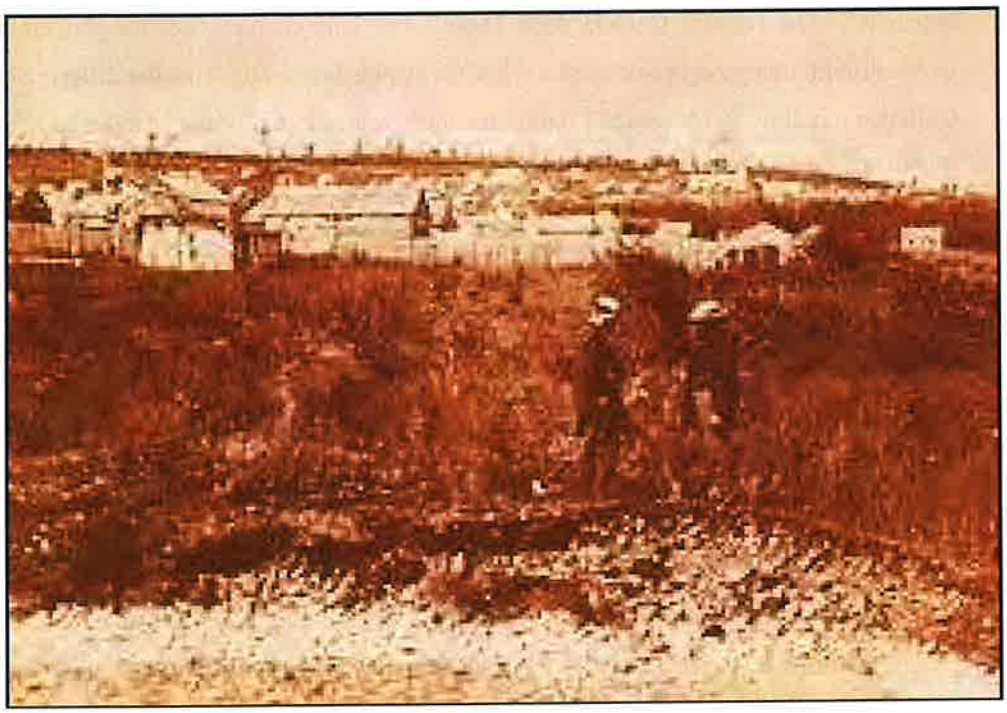

Figure 10: "Wequemalong, Manitoulin Island, Lake Huron," 1868-1929[141]

When the First Nations rejected the 1861 cession proposal and did not give permission for a survey of Manitoulin Island, they were told that the survey would be conducted under guard.[142] In November, John Stoughton Dennis executed the survey and, in so doing, informed the government of potential resource development on the Manitoulin Island chain.[143]

An Order in Council gave William McDougall, Superintendent General of Indians Affairs and Chief Commissioner of Crown Lands, the authority to conduct the process that

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[139] "The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders," *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.
[140] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[141] Adapted from "Wequemalong, Manitoulin Island, Lake Huron," 1868-1929, National Archives of Canada, Robert Bell Fonds, R7346-0-4-E, FA-272, Box: 4937, Access Code: 90, Copyright: Expired.
[142] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[143] Ibid.

resulted in the 1862 *Manitoulin Island Treaty*.[144] When McDougall set forth to secure the treaty, he was already prepared with a treaty text approved by the Executive Council on 12 September 1862.[145] The treaty council was held at Manitowaning in October 1862.[146] Indian Agent Ironside felt that he had garnered the approval of Chief Assiginack "who was considered by the Department to hold considerable influence"; however, resistance from Wikwemikong was soon apparent.[147] The Toronto, Canada West, *Daily Globe* later characterized the geographical division of Manitoulin treaty negotiations as a religious dispute stemming from the differing colonial-Christian missions.[148] McDougall found that there was one part of the island where he

> encountered a good deal of opposition. These were the Waquimakong band, Roman Catholic Indians, occupying the peninsula at the Eastern extremity of the Island. The Protestant and Pagan Indians, scattered over the rest of the Island, readily fell in with his proposals, and agreed to accept the reservation of certain specified guarantees of land for each family, in lieu of their right to roam over the whole territory. The Waquimakongs, a large portion of whom are Indians from the United States, influenced, it is said, by their priests, who are foreign Jesuits, conducted themselves in a very violent manner during Mr. McDougall's visit, and refused.[149]

Although McDougall was "somewhat shocked to receive an immediate refusal" at the outset of treaty discussions, he proceeded with the government position and was partially vindicated when the unity of various Manitoulin Island First Nations appeared to split during a break from negotiations.[150] Some of the First Nations appeared to be willing to take part in negotiations even though the "obstinacy came primarily from the Wikwemikong band, which had, of course been generally hostile to government from the earliest days of the Manitoulin Establishment" in Manitowaning.[151]

McDougall was forced to modify the treaty text because the other Manitoulin chiefs were uneasy about signing a treaty containing terms to which one group would not concede.[152] McDougall's pre-prepared text had to be revised to "exclude from the proposed arrangement that part of the Island eastwardly of the Manitoulin Gulf & Heywood Sound, – and other terms being

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[144] Copy of a Report of a Committee of the Honorable the Executive Council, approved by His Excellency the Governor General on the 14th November 1862," 1862/11/14, "Order in Council Confirming and approving of Surrender, Manitoulin Island as made – IT 238," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1846/IT238, Access Code: 90.
[145] "Copy of a Report of a Committee," Op. Cit.
[146] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.; "The Manitoulin Islands", 1863, Op. Cit.:2.
[147] Ibid.
[148] "The Manitoulin Islands", 1863, Op. Cit.:2.
[149] Ibid.
[150] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[151] Ibid.
[152] Superintendent of Indian Affairs W McDougall, 3 November 1862, (Manitoulin Island), Morris, 2000, Op. Cit.:22-24.

deemed necessary to prevent future difficulty."[153] These "other terms" included the provision that the Wikwemikong chiefs had "expressed their unwillingness to accede…as respects that portion of the Island, but have assented to the same as respects all other portions thereof."[154] In addition to exempting Wikwemikong unceded territory from surveys and individual ownership of property, the 1862 treaty also specified that "said Indians will remain under the protection of the Government as formerly, and the said easterly part or division of the Island will remain open for the occupation of any Indians entitled to reside upon as formerly, subject, in case of dispute, to the approval of the Government."[155] The "as formerly" clause is especially meaningful because the 1862 treaty expressly laid out the government position that, although "Indian title to said Island was surrendered to the Crown…by virtue of a treaty" made with Sir Francis Bond Head in 1836, "few Indians from the mainland whom it was intended to transfer to the Island, have ever come to reside thereon."[156] By1862, it was "deemed expedient (with a view to the improvement of the condition of the Indians, as well as the settlement and improvement of the country)" to create fixed locations of limited size for "Indians" and open Manitoulin for settlement.[157] Therefore, those who resided in territory not ceded in 1862 still enjoyed the affirmed treaty rights of 1836 with their emphasis on sole use without the incursion of settlers.

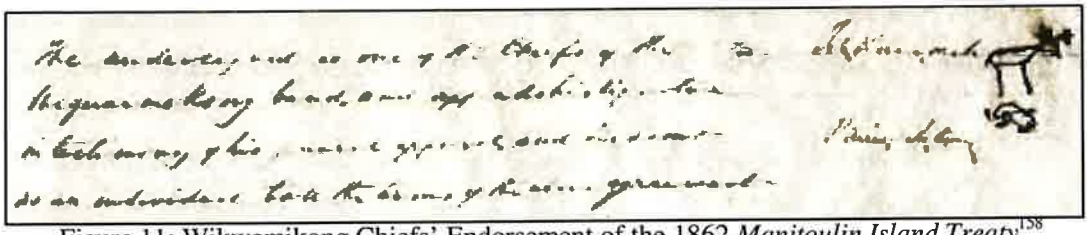

Figure 11: Wikwemikong Chiefs' Endorsement of the 1862 *Manitoulin Island Treaty*[158]
The Wikwemikong Chiefs' endorsement is separate from the main signatures of the treaty parties.

Two Wikwemikong Chiefs signed the treaty as an indication of their endorsement.[159] Although the terms of the *Manitoulin Treaty* had already been negotiated, McDougall's revision "was not to take effect" until approved by the Executive Council afterwards.[160]

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[153] "Copy of a Report of a Committee," Op. Cit.
[154] "The Manitoulin Island Treaty," Morris, 2000, Op. Cit.:310.
[155] Ibid:311.
[156] Ibid:309-310.
[157] Ibid.
[158] Adapted from "Surrender of land by the Ottawa, Chippewa and other Indians – IT 237," 1862/10/06, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1846, Access Code: 90.
[159] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.

While the *Manitoulin Treaty* purported to allow those qualified for acreages their "own selection of any land on the Great Manitoulin Island," further provisions requiring "contiguous or adjacent" lots revealed the government plan to ensure that "Indian settlements on the Island may be as compact as possible."[161] The government could "claim, from any reserve, any sites which might in its opinion, be better used for the public good" provided that a new selection could be made and the inhabitants would be reimbursed for any improvements to the land.[162] Lands that were not reserved, aside from Wikwemikong, were to be sold for settlement and the money was put into a fund from which band members would draw annual interest payments.

Immediately following the treaty, the Wikwemikong band were reportedly "conducting themselves in so violent a manner" that it was not "deemed expedient" to survey Manitoulin townships for settlement.[163] Fisheries Commissioner William Gibbard, a signatory to the *Manitoulin Treaty* who also took part in the great geographical claiming process of surveying, informed the "Government that, until this lawless spirit is repressed, it would be unsafe for any white man to remain on the Island, the whole of which is still claimed by the Waquimakongs."[164] In view of McDougall's relative success in achieving what the government considered surrender, the *Globe* thought it generally understood that it was "exceedingly undesirable that so much valuable territory, of so easy access from the settled parts of Upper Canada, should be left in a state of nature, and its settlement is of the more importance as being an almost necessary preliminary" to settling the north shore.[165] In the end, it was extremely "unsafe" for Gibbard to be on Manitoulin Island.

Many stakes from the survey conducted in the winter of 1863 were destroyed by a large fire that spread across Manitoulin Island.[166] After the fire, Manitowaning was dismal and damaged.[167] Several services usually administered through the village temporarily ceased.[168] Instead of following the Anglican tradition supported by the government village, it was speculated that two-thirds of the indigenous community in the area were professing the Roman

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[160] Copy of a Report of a Committee, Op. Cit.; Superintendent of Indian Affairs W McDougall, 3 November 1862, (Manitoulin Island), Morris, 2000, Op. Cit.:22-24.
[161] The treaty afforded 100 acres per head of family, 50 acres per single adult, 100 acres per "family of orphan children" and 50 acres to single orphans. "The Manitoulin Island Treaty," Morris, 2000, Op. Cit.:310-311.
[162] Surtees, "Manitoulin Island Treaties," 1986, Op. Cit.
[163] "The Manitoulin Islands", 1863, Op. Cit.:2.
[164] Ibid:2.
[165] Ibid.
[166] Anderson, 1865, Op. Cit.:39-40.
[167] Ibid.
[168] Ibid.

Catholic faith.[169] In contrast, in Wikwemikong, the Jesuit Fathers ministered to over six hundred "Indians and half-breeds" in a comparatively clean and orderly village.[170] Wikwemikong had been affected by the fire; however, through a concerted community effort, they were able to prevent the blaze from destroying their entire crops and the presence of "good fishing grounds" further mitigated the effects of the fire.[171]

3.4 Peroratio: Manitoulin for Sale to "Actual Settlers"

ADVERTISEMENTS.

DEPARTMENT OF INDIAN AFFAIRS

—o:o—

INDIAN LANDS.

—o:o—

Lands in the undermentioned Localities are offered

FOR SALE TO ACTUAL SETTLERS

Through the following Local Indian Agents:

On the Great Manitoulin Island, Lake Huron, Ontario.

MR. J. C. PHIPPS, of Manitowaning, is the agent for the sale of lands in following Townships on this Island:—Assignak, Bidwell, Howland, Sheguiandah, Billings, Campbell, Carnarvon, Allan, Tehkumah, and Sandfield; and in the Townplots of Sheguiandah, Manitowaning and Shaftesbury (commonly called Little Current).

MR. B. W. ROSS, of Cockburn Island, is agent for lands on that Island, as well as or those in the Townships of Robinson, Dawson (on Manitoulin Island), and Townplot of Gore Bay, Townplot of Tolsmaville (Cockburn Island), and Gordon, Mills, Burpee (on Barrie Island).

LEADING ROADS have been constructed throughout the Great Manitoulin Island.

ON THE SAUGEEN PENINSULA, ONTARIO.

The lands in the Townships of Amabel, Albemarle, Keppel, Eastnor, Lindsay, and St. Edmunds, as well as in several Townplots in the Peninsula, are offered for sale through MR. WM. SIMPSON, Indian Lands Agent, at Wiarton, County of Bruce, Ont.

ON THE GARDEN RIVER RESERVE, ONTARIO.

MR. WILLIAM VAN ABBOTT, of Sault Ste. Marie, is agent for the sale of lands within this tract, and which are situated in the Townships of Macdonald, Laird and Merodith; also for lands within the tract commonly known as the Batchewan Bay Indian Reserve, and comprised in the Townships of Aweres, Fenwick, Kars, Pennefather, Dennis, Berrick, Fisher, Tilley, Haviland, Vankoughnet, Tupper and Archibald.

A Leading Road is at present in course of completion through these lands, and will, when completed, afford ready communication with other parts of the country to intending settlers.

THE CONDITIONS OF SALE in respect to the lands within the Townships above described can be ascertained on application to the respective agents.

By order,

L. VANKOUGHNET,
Deputy Sup.-General of Indian Affairs.

DEPARTMENT OF INDIAN AFFAIRS,
OTTAWA, JUNE, 1884.

Figure 12: Indian Lands for Sale to "Actual Settlers"[172]

Indian Lands on Manitoulin Island and in adjacent areas were advertised for sale by the Department of Indian Affairs in a legal handbook. As local Indian Agents sold land to settlers, they advanced programs of assimilation and the rule of state law.

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[169] Anderson, 1865, Op. Cit.:39-40.
[170] Ibid.
[171] Ibid.
[172] Adapted from *A Legal Hand-Book and Law-List for the Dominion of Canada: A Book of Parliamentary and General Information*, Louis H Tache, (Toronto: Carswell & Co Law Publishers, 1888):482.

Despite the obstacles, surveys of Manitoulin were eventually carried out at an "unusually large" cost to the Government.[173] Large areas of land made available for settlement were already "occupied by a prosperous and thriving population" by 1880.[174] Visiting Superintendent Phipps, and other officials of the Department of Indian Affairs, actively advertised lands for settlement. Member of Provincial Parliament RA Lyon held forth at a supper on Manitoulin Island in March 1880, informing his electorate that Ontario colonization roads had been of such help in the settlement of Algoma District that the population of Manitowaning had increased from one hundred to almost five hundred people in two years and the population of the entire island increased by approximately one-half in the same period.[175]

This chapter has served to sound out the historical-geographical dissonances of the early extension of state law over Indian Lands. Manitoulin Island has always been a notable place of international interaction for indigenous peoples. Sir Francis Bond Head saw the fascinating geographical separation and indigenous connections of Manitoulin when he placed it at the centre of British legal relationships with indigenous peoples as the hospice for all "Indians." Head's paternalistic view of indigenous persons conceded the great violence involved in "civilization." Although Head's plan was ultimately a failure, in large part due to his ignorance of the size, diversity, and geographical extent of indigenous populations, it did set the stage for the colonization of Manitoulin Island from the government seat in Manitowaning in awkward parallel to unceded Wikwemikong and its Jesuit mission. Furthermore, this chapter exposes the duplicity of British legal agreements with indigenous peoples. Conflicts were more a function of the failure of state forces to uphold legal commitments than they were of indigenous persons' failure to understand European legal terms. When desirable lands or resources were at stake, state priorities trumped their promises and the power of indigenous peoples was portrayed as lawlessness. Far from being unlawful, in the face of increasing settlement and resource extraction, indigenous peoples continued to negotiate for places where they could legally reside without incursion.

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[173] Province of Canada, *The Indian Affairs, Province of Canada Report for the Half-year Ended 30th June 1864*, (Québec: Hunter, Rose & Co, 1865):4.
[174] Morris, 2000, Op. Cit.:22.
[175] *Manitoulin Expositor*, 10 April 1880, Volume: 1, No. 47, Manitowaning, Ontario.

Chapter 4

Fishing for Rights: Law, Jurisdiction, and Territorial Boundaries

The application of criminal law when mediating issues of indigenous self-determination became front-page news when Fisheries Commissioner William Gibbard was murdered one year after the signing of the 1862 *Manitoulin Island Treaty*.[1] Discussions of Gibbard's death have called it an "alleged murder" or stated that he was "apparently murdered and thrown overboard" from the steamer *Ploughboy*.[2] Most of the "facts" of the case are in dispute; however, a coroner's jury did make a finding of murder. In reporting the multifaceted circumstances surrounding Gibbard's death, newspaper accounts rendered into the national imagination a binary opposition of state lawfulness against the survival of indigenous identity.

4.1 Clashing Law Enforcement: Lonely Island

The dispute that preceded Gibbard's murder centred on Aboriginal title and assimilative colonization. Manitoulin Island "Indians" asserted their rights to a fishery off Lonely Island on the grounds of its contribution to their subsistence.[3] The 1862 *Manitoulin Treaty* stipulated that the "rights and privileges in respect to the taking of fish the lakes, bays, creeks and waters within and adjacent to the said Island, which may be lawfully exercised and enjoyed by the white settlers thereon, may be exercised and enjoyed by the Indians."[4] Nevertheless, since Lonely Island is adjacent to Wikwemikong unceded territory, the rights of settlers to any fishing activities are particularly contentious.

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[1] Robert J Surtees, "Treaty Research Report: Manitoulin Island Treaties," Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986.
[2] Peggy J Blair, "Settling the Fisheries: Pre-Confederation Crown Policy in Upper Canada and the Supreme Court's Decisions in *R. v. Nikal* and *Lewis*," *Revue générale de droit*, 31, (2001):158; Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia*, (Vancouver: University of British Columbia Press, 2008):32.
[3] Reginald Good, "Admissibility of Testimony From Non-Christian Indians in the Colonial Municipal Courts of Upper Canada/Canada West," *Windsor Yearbook of Access to Justice*, 23, (2005):90-91
[4] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories, Including the Negotiations on Which They Were Based, and Other Information Related Thereto*, (Toronto: Prospero Books, 2000) Reprinted from 1880 Belfords Clark and Company edition:311.

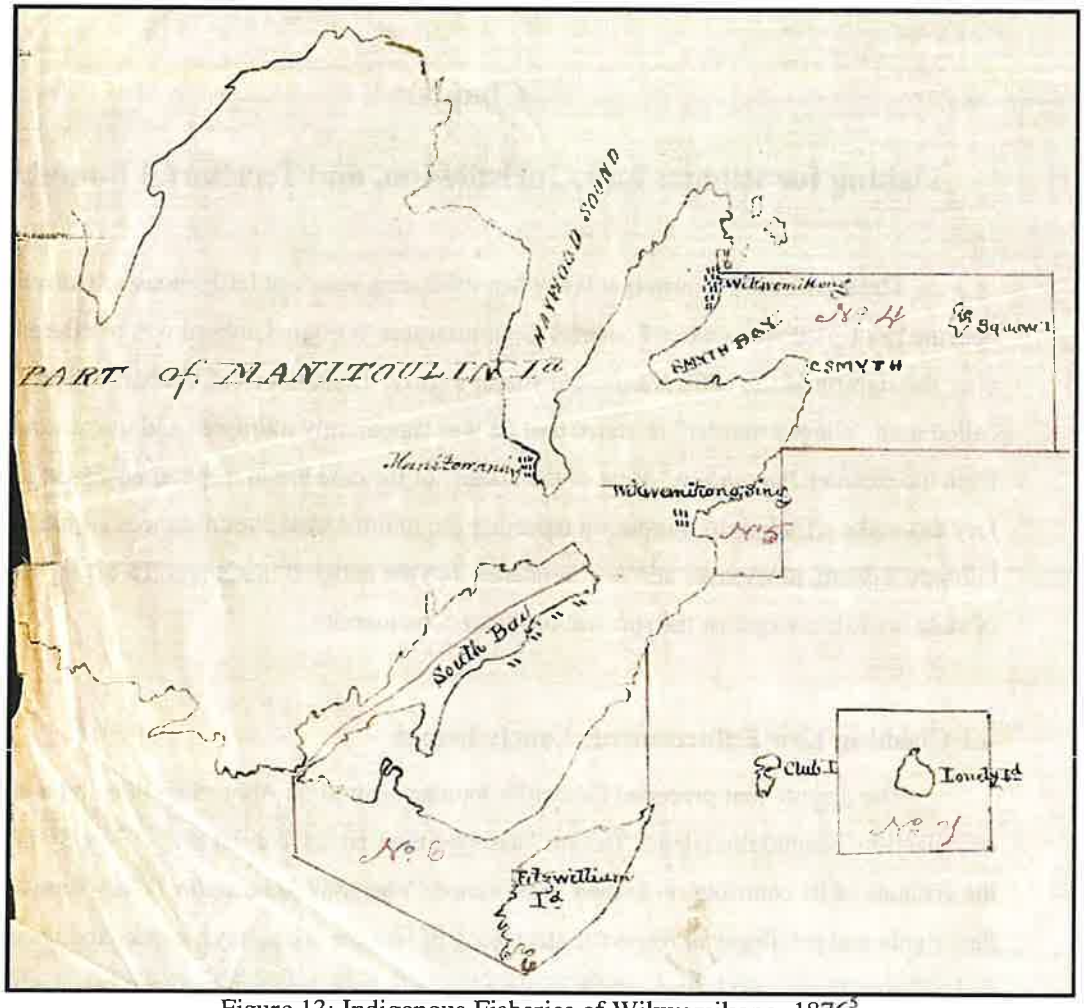

Figure 13: Indigenous Fisheries of Wikwemikong, 1876[5]
This sketch map is an example of using geographical legal instruments to negotiate claims to an indigenous fishery. Notice Lonely Island in the lower right corner.

The *Globe* gave a "narrative of the facts" that "induced the Government to have recourse to the very decided measure of sending" a "large armed force, to assert the supremacy of the law."[6] The *Globe* situated their readers by first placing the conflict within the historical-geographical context of treaty negotiations with McDougall in which the indigenous peoples "surrendered their claim to its exclusive possession – a claim founded on the alleged gift of the Island to the Indians by the Great Spirit Manitou, and also on the somewhat more tangible title

[5] Adapted from "[Wikwemikong Reserve no. 26. Plan of part of Manitoulin Island showing areas asked to be reserved for fisheries by the Indians] [cartographic material]," 1876, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1972, File: 5530, Access Code: 90.
[6] "The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders," *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.

supposed to be derived from an arrangement made in 1836 by Sir Francis Bond Head."[7] The 1836 treaty explained that the Manitoulin chain was a "most desirable place of residence" due, in part, to "being surrounded by innumerable fishing islands."[8] Mark Walters suggests that if the objective of the 1836 Manitoulin treaty was to "create a reserve in which Indians would fish and hunt free from non-native encroachment, that purpose could not have been accomplished if there existed a right of non-native access" to the indigenous fisheries.[9]

It was relayed to the *Globe*'s readership that two Manitoulin Island chiefs, who were "two of the largest farmers on the Island... having expressed themselves favourably" to the *Manitoulin Island Treaty* of 1862 were "forcibly taken out of their homes," transported to Manitowaning, the administrative seat of Indian Affairs, and "warned under penalty of death" that they must never return to Manitoulin Island.[10] On 17 December 1862, the families of Charles De La Ronde and Jean Baptiste Proulx were informed by an envoy from the "head chief of Waquimakong" that they must also leave.[11] The order was reinforced by the removal of the stove that provided heat to the families.[12]

The families were taken by boat to Wikwemikong, brought before the Council on the following morning, and informed through the Council's interpreter that they were banished from Manitoulin Island.[13] De La Ronde's attempt to find recourse by asking permission to speak with the Government agent at Manitowaning was futile because the Wikwemikong First Nation upheld that they "did not care about the Government agent or the Government either that they had laws of their own, and whoever would not obey those laws must be removed off the Island."[14] Charles De Lamorandiere wrote a letter to the editor of the *Globe* to put forth his own views in response

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[7] "The Manitoulin Islands," 1863, Op. Cit.:2.
[8] Despatch of Sir FB Head to Lord Glenelg enclosing the foregoing treaties, 20 August 1836, (Toronto), "Ontario – Copy of 'Sir Francis Bond Head's Treaty' Signed at Manitowaning in 1836 in the Matter of the Islands on the North and East Shores of Lake Huron. Copies of Robinson Superior, Robinson Huron and Lake Sincoe [sic] Treaties and Correspondence, Reports, Memoranda and Claims Relating to These Treaties," 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2848, File: 175,258, Access Code: 90.
[9] Mark D Walters, "Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada," *Queen's Law Journal*, 23, (1998):308.
[10] Chiefs "Taikoma and Keechee Baptiste" were reportedly asked to leave. From the similarity in names, despite spelling, it is probable that at least one of these Chiefs was one of the two Wikwemikong signatures of general approval on the 1862 treaty. "The Manitoulin Islands," 1863, Op. Cit.:2.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.

to their "Manitoulin Island Outrage" article.[15] He asked the *Globe* why their story on the banishment of De La Ronde and Proulx did not explain that they were "in the habit of giving spiritous liquor to the Indians, contrary to law?"[16] De Lamorandiere took the view that the word "lawless" might be applied to De La Ronde and Proulx, rather than solely to "Indians," as well as to "a good many others besides, including some Justices of the Peace of this neighbourhood."[17] Certainly, indigenous and colonial principles of law and its proper enforcement differed.

Membership in the state was also a feature of the discourse of conflict on Manitoulin Island. To the *Globe*, the most prominent fact was that the "leading spirits in the Waquimakong band, who, if they had their will, would prevent a single man from setting foot on the Great Manitoulin or any of the adjacent Islands, are foreigners."[18] Charles De La Ronde was "a Canadian by birth" and Jean Baptiste Proulx was the nephew of a priest who served on the Island "before the arrival of the foreign Jesuit priests."[19] Proulx's father lived in Wikwemikong.[20] On the borderlands of Manitoulin Island, De La Ronde claimed that "those actively engaged in the perpetuation of this outrage upon him were all foreign, that is, American Indians, with two exceptions."[21] De Lamorandiere disputed applying the word "foreigners" to persons who "left their all to come and live under the British Government by the invitation of an English Governor, Sir Francis Bond Head."[22] De Lamorandiere insisted that they had allegiance to the British Government "from the first American war, in which their ancestors shed their blood in defending the British flag, and again during the years 1812, '13 and '14, their fathers fought alongside of the British soldiers, and during the rebellion of 1837."[23] As the Canadian state was forming, and imperial priorities shifted, insights into indigenous contributions faded.

Since Proulx went to his father's house in Wikwemikong and refused to leave, a compromise was made that he could move four miles into the bush if he would depart Manitoulin

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[15] De Lamorandiere was involved in the *Ploughboy* incident in that he passed a message to lawyer Blain that Gibbard would be in contact about the incident later. Chas De Lamorandiere, Killarney, Lake Huron, 3 August 1863, "The Manitoulin Troubles," Letter to the Editor, *The Daily Globe*, Toronto, Canada West, 8 August 1863, Volume: XX, No. 194: 2; D Blain, "The Troubles on the Manitoulin," Letter to the Editor, *The Daily Globe*, Toronto, Canada West, 3 August 1863, Volume: XX, No. 189: 2; "Inquest on the Body of Mr. Gibbard," 1863, Op. Cit.:Front Page-2.
[16] Ibid:2.
[17] Ibid.
[18] "The Manitoulin Islands," 1863, Op. Cit.:2.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] De Lamorandiere, 1863, Op. Cit.:2.
[23] Ibid.

Island in the spring.[24] Jesuit priests at the mission at Wikwemikong were accused of "exciting the Indians to the perpetuation of outrages" such as this banishment. Proulx's father, also asked to leave by spring, gave a deposition to colonial authorities that his order of removal was made "'under the dictation of the Jesuit priests of Waquimakong, who openly say they are independent of the Government, and can make their own laws on their own lands'." The Superior at the Mission, Father Kohler, was especially singled out as having, according to reportage of Gibbard's deposition,

> denounced the Commissioner of Crown Lands, the Indian Agent, and other Government officers, as highway robbers; declared that Russia had never perpetuated a more villainous or infamous cruelty than that committed by the Commissioner of Crown Lands in robbing the Indians of their lands; said that if the Indians had taken his advice, instead of signing the treaty, they would have armed, and called the Sioux Indians to their aid; that he would himself have led them on, to drive every white man off the Indian lands, and made for the British Government a more costly and bloody war than the Indian mutiny, and that as their priest he was ready to arm himself and die for them.

In June, following the banishments, Fisheries Commissioner Gibbard visited the traditional indigenous fishing grounds off Lonely Island. De La Ronde, the Proulx families, a trader from Owen Sound named GL Newcombe, and "Fishing Chief Waseegecsceck, a native of Waquimakong, with his sons" were engaged in the Lonely Island fishery. De La Ronde and Proulx expressed their concern that they would be removed from this island as well and asked for government protection.

The form of state protection that Gibbard gave was a symbolic dismissal of indigenous laws and self-determination. The settler families had been found fishing without the consent of their own government yet with the, at least, partial tolerance of indigenous governments demonstrated by the presence of Waseegecsceck, the Fishing Chief. To these settlers acting outside of the laws of their state, Gibbard granted a seasonal license for the south half of Lonely Island "with the understanding that any peaceable and well disposed Indians who did not interfere… should be allowed to fish." As the only indigenous persons from Wikwemikong "who really make a business of fishing," Gibbard also offered Waseegecsceck and his sons a license for the fishing grounds on the north half of Lonely Island. Waseegecsceck "dare not take one, or hold any communication on business matters, with any officer of the Government, such having been strictly forbidden, under the penalty of banishment by the law-makers of Waquimakong." The law of Wikwemikong was far from immaterial.

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[24] The discussion on this page is based on the following source: "The Manitoulin Islands," 1863, Op. Cit.:2.

Gibbard's estimation of Waseegecsceck's fishing practices reveals narrow colonial ontologies of resource extraction in which profitability drives the scale of extraction. While Waseegecsceck and his sons may have had "more nets and fishing rig than all the other Indians put together," this did not preclude the importance of the fishery to the other indigenous fishers who relied on it.[25] David Blain, a Toronto lawyer on vacation who would later represent Oswanamkee in Sault Ste. Marie, made reference to "men of respectability who know their circumstances" when asserting that the Wikwemikong band lived for "about five months in the year exclusively on fish" and occasionally had to "resort to the use of slippery elm bark and buds of trees."[26] Since its importance lay in its place within indigenous lifeways rather than profits, small-scale use that maintained a healthy fishery was more valuable than large-scale extraction. In this light, the licensing by Gibbard of the fishery to Proulx for "$4 per annum, (mark the sum)... laid him open to the suspicion that he intended rather to famish the Indians than benefit the Government, se[e]ing that the license was issued for $4."[27] Gibbard's conduct is entirely in keeping with Douglas Harris' finding that by employing "myriad colonial strategies designed to induce fear, foster division, create truths, and assimilate the other, the Canadian state replaced indigenous fisheries law with its own."[28] Nonetheless, the *Globe* claimed that, prior to his death, as Gibbard was "making arrangements" for leasing fisheries, he was also reserving areas for Manitoulin Indians.[29]

On 28 June, Gibbard gave Father Kohler a note "requesting him to explain to the Waquimakong Indians that they must not trespass on De La Ronde's grounds."[30] Kohler "called in a number of the Indians" and he and Father Schonte "worked themselves into a great passion" despite Gibbard "having requested them to behave in a manner more becoming."[31] Kohler is reported to have said that "if he was not a priest, he would have his (Gibbard's) heart's blood," that Gibbard "had no business there with the British flag flying," and that "if the Indians were men, they would arm and follow him, and drive every white man off" of their indigenous territories.[32]

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[25] "The Manitoulin Islands," 1863, Op. Cit.:2.
[26] Blain, 1863, Op. Cit.: 2.
[27] Ibid:2.
[28] Douglas C Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001):4.
[29] "The Manitoulin Islands," 1863, Op. Cit.:2.
[30] Ibid.
[31] Ibid.
[32] Ibid.

Upon hearing of plans to evict the new licensees from Lonely Island, Gibbard drafted a notice to the Head Chief warning him of what the government response would be to this eviction.[33] When he discovered that the Chief was absent from home, Gibbard proceeded to Lonely Island. Gibbard was eating dinner in Proulx's house when he "heard drums beating and men shouting" as the eviction party arrived. A "worthy named Lawa-anameekee" read a written statement of eviction. Gibbard, the representative of state law, avowed that this would not occur in his presence and "on the Indians moving forward... called on his men," who were waiting in their boat, to "land and bring their revolvers." The eviction party attempted to prevent the boat from landing; however,

> Mr. Gibbard ran forward to the beach, and standing between them and his boat, pulled out a hunting knife and threatened to strike the first Indian who meddled with his men. One of the Indians brought from one of the boats a long knife, with a blade of 18 inches or thereabouts, and came towards Mr. Gibbard, but his men meanwhile were landing, revolvers in their hand, and the Indians did not think it prudent to commence an attack.

During the discussions that followed this stand-off, Gibbard "read the law to the Indians, and assured them that if they took the law into their own hands, and committed outrages" they would be punished. In turn, the eviction party explained that they "had nothing to do with the Government or with the British laws – that they had already removed various parties from the Manitoulin, and, although the Government agents said they would be punished, no punishment had come." The eviction party's response was based on their own legal position that "all the islands in the lake were theirs" and they would not permit any fishing to continue without their consent. Gibbard refuted this argument, proclaiming that "their island was the Queen's, and that they were subject to her laws." The leader of the eviction party refused to take the notice that Gibbard had prepared for the Head Chief.

The language of protection in early indigenous-government negotiations implied that agreements would safeguard their communities from "white" settlers and settlement. Blain also traced the dispute to this point.[34] Nonetheless, he presented a different perspective to *Globe* readers than did their columnist. As Blain described it, Gibbard "got into difficulty" and the consequent "breech was widened at every meeting, till finally he threatened to run a line dividing the island, or a part of it, in the face of all opposition, and boldly stated that he would clear the

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[33] Unless otherwise indicated, the discussion on this page is based on the following source: "The Manitoulin Islands," 1863, Op. Cit.:2.
[34] Blain, 1863, Op. Cit.:2.

way for the compass with his revolver."[35] The Wikwemikong eviction party, believing that Gibbard "acted on his own responsibility without the sanction or approval of the Government, asked to see his instructions before they would submit." Since Gibbard refused to prove his right, Blain reasoned that it was "not difficult to understand how the Indians would resist" what appeared to be the actions of an unreasonable and unlawful individual.

Blain relayed the Wikwemikong case that the fishery on the south side of Lonely Island "was never ceded nor surrendered by them" in the 1862 *Manitoulin Treaty*. Their rationale had its basis in their own legal principles. First, that the "Indians hold their lands as tenants in common, and it is stated that the signatures of all the parties who are as such interested, were not obtained." Second, in acknowledgment that the "Chief has authority to negotiate… there are many Chiefs among the Manitoulin Indians, and the signatures of all were not obtained." Since they did not sign the treaty, they reasoned that the "document itself must testify, that there is not the signature of one single Waquimakong Indian Chief." Third, those who did sign the treaty were "by the Government Agents unduly and improperly influenced in different ways." Fourth, that while treaty negotiations were underway, it was not understood by the indigenous persons that Lonely Island, or its fishery, were part of the discussion. Fifth, if it were correct that the island had been ceded, "they understood while the negotiations were going on, that the effect of the cession was not that the whites should drive them off the island, but that the Government should protect them in their possession against intruders." Blain contended that, if this were true, the Wikwemikong First Nation was "doing nothing illegal in asserting their rights" to the indigenous fishery.

Although, according to Gibbard, after the confrontation, the eviction party departed to Wikwemikong to hold a Council on the matter, as Gibbard was about to leave Lonely Island, half of the party returned.[36] It was anticipated that the other half would return later "some 40 or 50 strong, and armed."[37] The *Globe* reported that the eviction party took the position that, "if Mr. Gibbard would stay there another day he would find who had the power."[38] Gibbard replied that he was too busy to stay and promptly left Lonely Island.[39]

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[35] Unless otherwise indicated, the discussion on this page is based on the following source: Blain 1863, Op. Cit.:2.
[36] "The Manitoulin Islands," 1863, Op. Cit.:2.
[37] Ibid.
[38] Ibid.
[39] Ibid.

4.2 Applying and Subverting the Law

In a sworn deposition, De La Ronde and Proulx senior described their forcible eviction from Lonely Island by a large party from Wikwemikong, some of whom allegedly said that they "acted through their priests' advice, and that some of them came unwillingly, knowing that, if they had refused, they would have been banished."[40] Banishment is one form of indigenous law enforcement.

The growing Canadian state had another. It deployed a "strong force to assert the supremacy of the law, and to bring down for trial the chief perpetrators and abettors" in the hopes that "punishment of the ringleaders may have the effect of awing the rest into submission."[41] Peggy Blair explains that Gibbard responded to the Lonely Island removals by taking a "posse" to Wikwemikong.[42] Gibbard's demonstration of law enforcement included two sergeants and six officers from the Toronto Police, the High Constables of Barrie and Collingwood, and fourteen other men.[43] As the *Daily Globe* describes, Gibbard intended to arrest the "ring-leaders" including Kohler.[44] Gibbard disclosed that there were approximately fifteen "refractory Indians to be arrested that could not be controlled, but that the respectable Indians would assist us in securing them."[45] Harring underscores the "legal structuring" of the 1863 fishery dispute: the indigenous peoples avowed that they had a sovereign prerogative to the protection of their fishery yet the provincial government deployed a large company of police to arrest "what amounted to an entire band on petty criminal charges."[46] Gibbard was overly-confident in the effectiveness of this show of force.

At Wikwemikong, an "armed standoff" ensued with a "large party of Ottawa warriors, some 300 in number."[47] After arresting the priest, a melee broke out in which one man was thrown into the water, Gibbard ordered that the priest be released, and Gibbard's men again retreated.[48] De Lamorandiere observed that, in the face of Gibbard's armed force, the "Indians said that they were willing to go down if legally summoned, but would rather die than go

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[40] "The Manitoulin Islands", 1863, Op. Cit.:2.
[41] Ibid:2.
[42] Blair, 2001, Op. Cit.:158.
[43] "The Manitoulin Islands", 1863, Op. Cit.:2.
[44] Ibid:2.
[45] "City Council – The Case of Sergeant-Major Cummins," *The Daily Globe,* Toronto, Canada West, 24 November 1863, Volume: XX, No. 286: Front Page.
[46] Sidney L Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 1998):153.
[47] "City Council – The Case of Sergeant-Major Cummins,"1863, Op. Cit.:Front Page; Blair, 2001, Op. Cit.:158.
[48] Blair, 2001, Op. Cit.:158.

handcuffed like criminals."[49] When Gibbard heard this refusal to go in handcuffs, he "promised that he would not take one of them prisoner, if they would appear if summoned."[50] Sidney Harring explains the compromise as a matter of disputed legal status and jurisdiction.[51] While the Wikwemikong group "would not appear before any Ontario court, in accord with their position that the province had no jurisdiction over them... they would agree to appear before a government hearing, consistent with their position as 'allies of her majesty.'"[52] Gibbard's subsequent actions do not reflect this agreement.

As the "posse" stopped at Bruce Mines on their way to Sault Ste. Marie, Gibbard spotted a "member of the Wikwemikong Band and arrested him although Oswanamkee had not been involved in the incident" on Manitoulin Island.[53] Oswanamkee was handcuffed and taken before the court in Sault Ste. Marie.[54]

Blain, Oswanamkee's legal representative, describes Gibbard's testimony that, having requested that the "Indians" assemble to discuss their "rights, a dispute arose, and Mr. Gibbard fearing difficulties, ordered them to disperse, to which they paid no attention," causing him, quite literally, as a magistrate in the District of Algoma, to read the *Riot Act*.[55] Blain conveys the preposterous and tragic circumstances that "the whole of the Indians might be tried, and, if convicted, the penalty under the statute would be death" even though few of the Manitoulin "Indians" could "understand the most ordinary discourse in English," much less the *Riot Act*.[56]

Gibbard's multiple authorities to act as an agent of the government on the colonial frontier of Canada West left little recourse for the Manitoulin Indians in the courtroom. Gibbard, acting as

> magistrate... took the deposition of Mr. Proulx...issued a warrant to the constables, directing them to bring before him... the Indians therein named... then he went as a constable to make the arrest under this warrant. The warrant was issued on an alleged breach of the Fishery Act, but the Act authorized no such proceeding. – He, however, arrested the Indian on it, and carried him to Sault Ste. Marie, where he called together the magistrates of the place and stated the offence to be that contained in the warrant... laid further information, which went to show that the prisoner was guilty of 8 or 4 indictable offences, one being the refusal to disperse after the Riot Act was read.[57]

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[49] De Lamorandiere, 1863, Op. Cit.:2.
[50] Ibid.
[51] Harring, 1998, Op. Cit.:153.
[52] Ibid.
[53] Blair, 2001, Op. Cit.:158.
[54] De Lamorandiere, 1863, Op. Cit.:2.
[55] Blain, 1863, Op. Cit.:2.
[56] Ibid.
[57] Ibid.

The magistrates dismissed Blain's argument for the defense that the "whole question is one of title" with the decision that producing a fishing license was predicated on the presumption that the property belonged to the Crown.[58] Presiding in Sault Ste. Marie, Territorial Judge of the District of Algoma John Prince found Oswanamkee, "liable to be indicted for riot and forcible entry, on the unrecorded sworn testimony" of Gibbard.[59] While Oswanamkee awaited trial, Prince allowed bail of one hundred dollars by the accused and sureties of fifty dollars each from two priests.

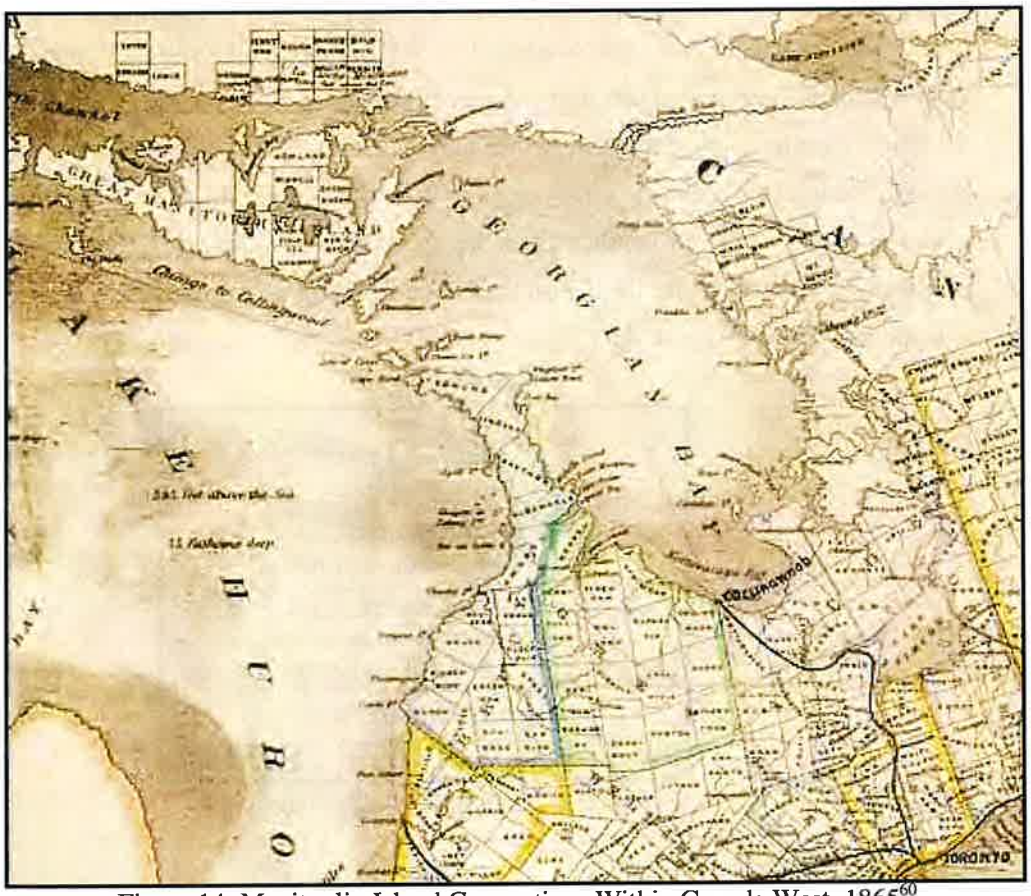

Figure 14: Manitoulin Island Connections Within Canada West, 1865[60]

Manitoulin Island has been mapped into linear state law as Canada West extends into the colonial frontier. The legal and geographical connections between Manitoulin, Collingwood, and Toronto are featured in this chapter.

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[58] Blain, 1863, Op. Cit.:2.

[59] Good observes that other unsworn testimony was taken but, as it was not considered by the judge as evidence, was presumably from "non-Christian Indians." Good, 2005, Op. Cit.:90-91.

[60] Adapted from "Map of Canada West [cartographic material]," National Archives of Canada, Toronto: WC Chewett, 1865, Alexander E MacDonald Canadiana Collection #494, R11981-135-7-E, Microfiche NMC105071, Local Class No. H3/400/1865, Other accession No. 80101/245 CA, Access Code: 90, Copyright: Expired.

4.3 Submerging the Law

The seemingly bizarre situation that the entire group who travelled to Sault Ste. Marie departed the city together on the same sailing of the steamship *Ploughboy* is an uncomfortable reality of the geography of life on Lake Huron at that time. Several days passed between Gibbard's disappearance from the *Ploughboy* and the discovery of his body a mile off of Little Current floating upright, arms extended, head contused, inches below the surface of the water.[61]

During that time, Blain assisted Captain Smith in inquiring into Gibbard's disappearance.[62] Already, Blain felt it necessary to make it known that he was "inclined to think that the Indians did not throw him overboard."[63] While Gibbard was still mysteriously missing, the *Newmarket Era* reported that many of the passengers on board the *Ploughboy* "declared that the Indian must have killed him and thrown him overboard."[64] The *Era* advocated, if Gibbard's "blood… be found in their skirts, they ought to be made to suffer the penalty of their crime, – while the Jesuits should be banished altogether from the Island, and other spiritual guides placed over them having respect for the British law."[65] The *Ploughboy* transported Gibbard's body back to Collingwood on 5 August 1863.[66]

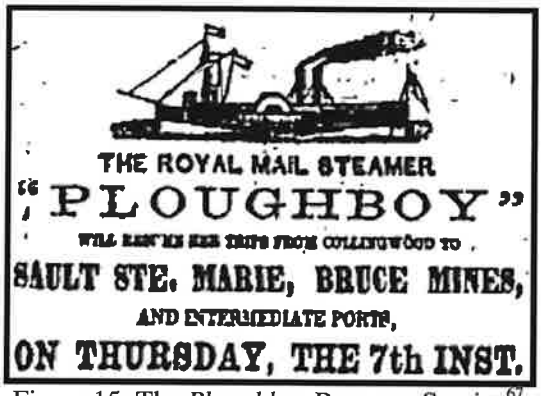

Figure 15: The *Ploughboy* Resumes Service[67]

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[61] At the time, Little Current and Wikwemikong, the latter loosely defined, were sub-ports of Sault Ste. Marie. Until his death the previous month, Manitowaning Indian Superintendent Ironside had acted as the landing waiter and received $200 for these services. "Inquest on the Body of Mr. Gibbard," 1863, Op. Cit.:Front Page-2; Anderson, 1865, Op. Cit.:28.

[62] Blain, 1863, Op. Cit.:2.

[63] Ibid.

[64] "Indian Outrages in Canada," *Newmarket Era, and North York General Intelligencer and Advertiser*, Friday 31 July 1863, Volume: XII, No. 25:2.

[65] Ibid.

[66] "Death of Mr. Gibbard," *The Daily Globe*, Toronto, Canada West, 5 August 1863, Volume: XX, No. 191: 2.

[67] Adapted from "The Royal Mail Steamer *Ploughboy*," *The Daily Globe*, Toronto, Canada West, 3 August

Gibbard had not been seen on the *Ploughboy* after the early hours of the morning on 28 July 1863.[68] As reported following a Coroner's Inquest into his death, the events of that night were extremely contentious and involved issues of "race," class, religion, law, intoxication, and violence.[69] On 12 September 1863, the Coroner's Jury brought a verdict of willful murder by "person or persons unknown."[70] The *Globe* recorded, "[u]pon no man had well-defined suspicion fallen, that we are aware of."[71] Despite this conclusion, Good remarks that it was "alleged that Osaw-Ani-Mikee was responsible" even though he was not charged for the murder and his earlier charge was dismissed because of lack of sufficient evidence.[72] Rumours took hold of this deeply mysterious, and nationally-important, story.

4.3.1 Toronto Recriminations

The case was of such great import that Sergeant-Major Cummins of the Toronto Police Force, one of the large group whom Gibbard led to Manitoulin, was the subject of great scrutiny by the Mayor and City Council for his role in the affair. Toronto Councillor Bennett exclaimed, the "blood of the murdered man, and the tears of the widow and orphans, as also, the voice of the citizens of Toronto cry aloud" for Cummins' dismissal.[73] Alderman Metcalf claimed that the Council had a valid interest in the matter as one of their "fellow citizens had been hurled out of existence, and a foul and bloody murder had been committed in [their] midst."[74] Gibbard was an influential figure in expanding the lawful reaches of Canada West. His death shook the legal foundations of colonial society.

The Mayor read a letter to the councilors from Cummins, dated 23 October 1863, in which Cummins repudiated the "cruel charge by implication of murder fastened" on him.[75] Cummins was criticized for having found seven Roman Catholic individuals to respond to Gibbard's request for men when the situation involved the arrest of a Roman Catholic Priest.[76]

1863, Volume: XX, No. 189: Front Page.
[68] "Inquest on the Body of Mr. Gibbard," 1863, Op. Cit.:2.
[69] Ibid.
[70] Ibid.
[71] "Inquest on the Late Mr. Gibbard," *The Daily Globe*, Toronto, Canada West, 15 September 1863, Volume: XX, No. 226: 2.
[72] Good, 2005, Op. Cit.:90-91
[73] "City Council – Sergeant-Major Cummins," *The Daily Globe*, Toronto, Canada West, 20 October 1863, Volume: XX, No. 256: Front Page.
[74] Ibid.
[75] "City Council – The Case of Sergeant-Major Cummins," 1863, Op. Cit.:Front Page.
[76] Ibid.

Cummins protested that he was "entirely ignorant of the nature of the duty to be performed" when he chose his men.[77] The Mayor supported Cummins by stating that Gibbard had asked him whether the Commissioners of Police would assign him men to "assist him in executing the commands of the Government… not upon priests, as had been erroneously supposed, but against some refractory Indians" on Manitoulin Island.[78]

4.4 Another Fishery "Outrage"

As settlement continued on Manitoulin Island, the discord between indigenous power and the prerogative of the state to enforce law continued to reverberate. On 28 October 1875, the *Toronto Daily Globe* announced another "Outrage by Manitoulin Island Indians."[79] From the pen of the correspondent, this "serious outrage" was "committed by the Indians of Manitoulin Island" when they removed fourteen thousand yards of net and fifty packages of fish from two Collingwood fishers off Squaw Island.[80] Allegedly, one of the fishers thus "robbed was among the party who some years ago accompanied Mr. Gibbard to investigate a similar outrage on the part of these Indians, and it is thought that had something to do with the present case."[81] The argument that the individuals from Wikwemikong who applied this enforcement measure were "acting under instructions" of DIA Visiting Superintendent Phipps was dismissed by the newspaper correspondent because the nets were purportedly four miles beyond the land boundary of the reserve.[82] Such a high level of "indignation was caused among the fishermen by this outrageous act that it was with difficulty they were restrained from going in a body and taking summary vengeance on the Indians."[83] Instead, the fishermen approached the government.

The newspaper columnist darkly communicated the fear that if the government did not "give satisfaction… the consequences may be serious, as the fishermen do not feel disposed to submit quietly to such treatment."[84] In reply to an alarmed Indian Branch, Phipps defended, that

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[77] "City Council – The Case of Sergeant-Major Cummins," 1863, Op. Cit.:Front Page.
[78] Ibid.
[79] *The Toronto Daily Globe*, 28 October 1875, "Manitowaning – Correspondence Concerning Seizure of Nets by Manitoulin Island Indians from White People Illegally Fishing," Clipping, 1875, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1972, File: 5522, Access Code: 90; "Collingwood – Outrage by Manitoulin Island Indians – Regatta – Bonus to Foundry," *The Toronto Daily Globe*, 28 October 1875, Volume: XXXII, No. 258:Front Page.
[80] Ibid:Front Page.
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.

the "Indians" were only "exercising the power and privileges conferred upon them as Lessees, by the Fisheries Act (sec. 13)" in removing a "considerable number of nets which they state were set in trespass within their fishery, and delivered them to my charge, to be dealt with according to Law."[85] Phipps supported them in laying a complaint against the two fishers.[86] Summons were drafted for the parties involved in the dispute and, as a Magistrate as well as a Visiting Superintendent, Phipps could examine the case.[87] Since the fishermen did not respond to the summons, only the evidence of the Wikwemikong Indians was heard by Phipps and GB Aubrey, Fisheries Overseer.[88] Although the case was postponed, Phipps offered the opinion that the Wikwemikong "Indians" seemed to have "acted with great forbearance" and did not appear to have "in any way exceeded the powers the Law confer[ed] upon them for the protection of their Fishery from trespass."[89] Phipps and the Aubrey investigated the charges, found the fishermen guilty, and fined them twenty dollars each with costs in addition to the forfeiture of their nets and fish.[90]

Indigenous rights to lands and resources were caught in the middle of clashing legal ontologies and unequal membership in the state. The fishermen appealed to the Department of Marine and Fisheries. The departmental Minister pointed out to Aubrey that Phipps, "under his authority as a Magistrate and lessee of the trust acting in their behalf," could order that the nets and fish be seized; however, "Indian" wards of the state could not take it upon themselves to apply the law and seize nets and fish under their own lease.[91] Since the Minister of Marine and Fisheries judged that the fishers had not trespassed in waters under lease to the Wikwemikong Reserve, he concluded that the "Indians" could be held responsible for "illegal conduct."[92] The Minister of Marine and Fisheries

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[85] Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), "Manitowaning – Correspondence Concerning Seizure of Nets," Op. Cit.
[86] Ibid.
[87] Reginald Good calls Phipps "a magistrate and visiting superintendent" when discussing a case Phipps was involved with in 1874. Good, 2005, Op. Cit.:90; Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1878,* (Ottawa: Maclean, Roger & Co., 1879):123; Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), "Manitowaning – Correspondence Concerning Seizure of Nets," Op. Cit.
[88] Phipps to Minister of the Interior Indian Branch, 8 November 1875, (Manitowaning), "Manitowaning – Correspondence Concerning Seizure of Nets," Op. Cit.
[89] Ibid.
[90] Ibid.
[91] NF Whitcher, for the Minister of Marine and Fisheries, to Fisheries Overseer GB Aubrey, 28 December 1875, (Ottawa), "Manitowaning – Correspondence Concerning Seizure of Nets," Op. Cit.
[92] Ibid.

> perceive[d] that throughout these documents fishery stations are mentioned as belonging to the Indians and reserved by them for their exclusive use. It is inferred, therefore, that some strange misconception exists at the bottom of this affair ... Whether it is attributable to ignorance or perversity respecting fishing rights in the neighbourhood of Indian lands, does not yet appear. Probably these Indians believe or are instructed that there exist reservations of Indian fisheries' to which they have exclusive right – irrespective of fishing leases or licenses.[93]

Aubrey was instructed to "inform the Indians... that no pretensions to exclusive fishing rights will be recognized" in no uncertain terms because "the public" had already "suffered trouble and expense through violent proceedings in the same neighbourhood."[94] Assuredly, as wards, Indians were not considered part of this public.

Furthermore, the rights of the convicted fishermen were extended further into indigenous territory because their "just" access to a license was contingent on the Indian Superintendent granting permission to use reserve land for drying the fish.[95] While Aubrey was ordered to suspend the conviction that was formed jointly with Phipps, the Minister of Marine and Fisheries could not casually overturn Phipps' judicial authority.[96] The Minister forewarned Aubrey that the fishers might "protect themselves at law" and seek damages if Phipps pursued the collection of fines.[97] The Minister of Marine then wrote to Deputy Minister of the Interior Meredith informing him that the *ex parte* decision had been revised through a Member of Parliament.[98] In this way, the caution was passed on to the Indian Branch without directly challenging their legal position as guardians or their judicial functions.

4.5 Dispensing with Lonely Island

Administrative rights to Lonely Island were claimed by the Department of Indian Affairs until the protracted jurisdictional quarrel involving issues of "title to the Islands in the Great Manitoulin group," was finally resolved in 1913.[99] In 1891, Lonely Island was still "claimed by

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[93] NF Whitcher, for the Minister of Marine and Fisheries to Fisheries Overseer GB Aubrey, 28 December 1875, (Ottawa), "Manitowaning – Correspondence Concerning Seizure of Nets," Op. Cit.
[94] Ibid.
[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Aubrey was informed that MP Cook overturned the decision. Ibid.
[99] "Disposing of light-house site on Lonely Island to the Department of Marine and Fisheries," Department of Indian Affairs, 22 February 1913, "Manitowaning – Application From the Department of Marine and Fisheries to Purchase for Lighthouse Purposes, 100 Acres of Lonely Island Situated Contiguous to the Great Manitoulin Island in Georgian Bay," 1891-1913, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2597, File 120, 488, Access Code: 90.

the Ojibways and Ottawas of Manitoulin Island as being one of those set apart by the Treaty made between Sir Francis Bond Head and the Indians, to become the property under the Crown of all Indians who might reside thereon."[100] Although the island remained a fishing station rather than a place of permanent settlement, Phipps surmised that Lonely Island had been surrendered in the 1862 *Manitoulin Treaty* and was therefore "in the hands of the Department."[101] The Department of Marines and Fisheries had already erected a lighthouse on the island and requested that the entire island be transferred into their control.[102] By 1898, a sawmill was operating on Lonely Island even though it was still officially held by Indian Affairs "on behalf of the Indians."[103] To the chagrin of the DIA, the Ontario Commissioner of Crown lands had granted a license for the cutting of timber.[104] The Ontario government continued to press their claims until Assistant Deputy and Secretary of Indian Affairs McLean notified the Ontario Ministry of Marine and Fisheries that Lonely Island would be categorized as a "non-disposition by either Government until the question of title" was determined.[105] When, in 1913, the province wished to officially secure lands for lighthouses, the problem had to be resolved by obtaining the consent of the Administrator of the Government of the Province of Ontario and the Governor in Council because the *Indian Act* required it.[106] One hundred acres were finally set aside for the Lonely Island lighthouse.[107]

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[100] Jas Phipps to Deputy Superintendent General of the DIA L Vankoughnet, 31 October 1891, (Manitowaning), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.

[101] Ibid.

[102] Deputy Minister of Marine William Smith to Deputy Superintendent General of DIA Vankoughnet, 30 November 1891, (Ottawa), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.

[103] Secretary of the DIA JD McLean to the Assistant Commissioner of Crown Lands Toronto, 26 November 1898, (Ottawa), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.

[104] Assistant Commissioner of Crown Lands White to Secretary of the DIA JD McLean, 30 November 1898, (Toronto), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.

[105] Deputy Superintendent General of the DIA Pedley to MP Leighton McCarthy, 8 April 1904, (Ottawa), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.; Deputy and Secretary of the DIA JD McLean to Deputy Minister of Marine and Fisheries, 26 December 1912, (Ottawa), "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.

[106] Section 46 of the *Indian Act*, "as amended by Sec., 1, of Chap., 14, 1-2 Geo., V., provided that no portion of any Indian Reserves shall be taken for the purpose of any public work of work designed for any public utility without the consent of the Governor in Council." "Disposing of light-house site on Lonely Island to the Department of Marine and Fisheries," Department of Indian Affairs, 22 February 1913, "Manitowaning – Application From the Department of Marine and Fisheries," 1891-1913, Op. Cit.; "Certified copy of a Report of the Committee of the Privy Council, approved by His Royal Highness the Governor General on the 27th. February, 1913," 27 February 1913, "Manitowaning – Application From the

4.6 Peroratio: Unceded Peoples and Places

Sympathetic accounts of the acquisition of territory for Canada are inclined to linger on the exploitively poor translation of European philosophies of land ownership into indigenous terms. The focus of colonizing agents on land as an object for ownership missed the mark for many indigenous peoples who saw themselves as negotiating principles of use and protection on the lands of which they are a part. While critiques based on this ontological incompatibility are informative, they must go further in order to be precise. Although they are part of the same earth systems, Eurocentric ontologies naturalize a distinction between lands and waters. Since holistic indigenous epistemologies do not resonate with this social construction, from indigenous perspectives, the agreements that they negotiated regarding the protection and use of places included lands, waters, and everything that was a part of a place. In this way, the island fisheries of the indigenous peoples of Wikwemikong were part of their unceded territory. The inhabitants of that territory were thus also unceded and, despite pressures, desired to find ways of continuing their own forms of governance.

When, through the 1876 *Indian Act*, a pseudo-municipal electoral system was imposed on the Manitoulin Island Unceded Band, they refused to accept their apportionment from the municipal loan fund.[108] Phipps attributed this strategic decision to the "distrustful nature of the Indian, and a feeling that injustice was done them in taking away their fisheries and renting them to White men, which led them to fear that an attempt was being made to take their land from them."[109] Although Phipps felt that he had gained some ground in explaining the fund, the Unceded Band had "not yet decided to accept the money" and were "paying considerable attention" to work on the colonizing roads that were cutting through Manitoulin Island.[110]

As this chapter has shown, the indigenous peoples of Manitoulin Island and the north shore were not mystified, nor were they helpless, in their sense of injustice: they were aware of the legal assertions of the colonizing state and of the promises that had been made to them. The disputes that arose between indigenous peoples and the frontier state over differing ontologies of land and territory were valid disagreements about the legal geography of Manitoulin lands and waters. As indigenous peoples continued to negotiate their legal relationships with the state and

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Department of Marine and Fisheries," 1891-1913, Op. Cit.
[107] Ibid.
[108] Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877*, (Ottawa: Maclean, Roger & Co., 1878):21-22.
[109] Ibid.
[110] Ibid.

enforce legal order, their strength was met with hostility. Weakness may have fit with colonialist self-congratulatory munificence; however, organized indigenous strength struck at the heart of colonial legitimacy. If indigenous peoples were functional societies inhabiting the land, then the colonial state had no right to claim it. Therefore, indigenous demonstrations of legal order and power were interpreted as aberrant outbursts of unlawful violence.

Chapter 5

The *Indian Act*: Legislated Segregation

The 1876 *Indian Act* entrenched an erroneous legal category into the developing Canadian state: the singular homogenous "Indian" in need of "civilization." Colonialist distinctions between "Indian status" and Eurocentric cultural traits associated with citizenship were instilled in policies and legislation preceding Canadian Confederation in 1867, consolidated into the 1876 *Indian Act*, and remain a challenging organizing feature of Canadian society.[1] The *Indian Act*, albeit a revised version, remains in effect today.

In the eyes of colonizing governments, a close watch had to be kept on "Indians" in order to map a route through the precarious terrain of assimilative racial transformation. Matthew Hannah's historical-geography of the late-nineteenth century imposition of US agency life on the Oglala Lakota (Sioux) of the northern Great Plains describes the way that the Indian Agents of the US government would not allow Aboriginal persons off the reserve until they were considered effectively individualized and immobilized such that the "deterrence of criminal or disorderly behavior ceased to depend on immediate surveillance."[2] Corresponding views were held by their Canadian contemporaries. William Duncan of the Metlakahtla Indian Mission of British Columbia, a man who was later lauded in the Canadian Senate as "one of the most successful missionaries in the world," launched into the subject of surveillance as the "proper starting point for commencing a right policy in Indian affairs; for without Surveillance no satisfactory relationship can ever exist" between "Indians" and the state.[3] Prejudicial assumptions that indigenous peoples warrant invasive examination for criminal intent, and are particularly

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[1] In 1850, *An Act for the protection of the Indians in Upper Canada from imposition and the property occupied or enjoyed by them from trespass and injury* prohibited the conveyance of Indian land without Crown consent, exempted Indians from taxation, and decreed that Indians were not liable for the payment of certain categories of debts. A similar act in Lower Canada offered the first definition of "Indian": a person of indigenous "blood" who belonged to a "tribe" and their spouses and children; however, it was amended the following year to exclude non-Indian males married to Indian women. The 1857 *Act for the Gradual Civilization of the Indian Tribes in the Canadas* required that an adult male candidate for enfranchisement meet government standards of good character, lack of debt, and fluency in English or French. The 1857 *Civilization Act* enshrined governmental distinction between indigenous cultural identities, associated with reserve geographies, and success in settler culture off-reserve.

[2] Matthew G Hannah, "Space and Social Control in the Administration of the Oglala Lakota ("Sioux"), 1871-1879," *Journal of Historical Geography*, 19(4), (1993):428.

[3] Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1875*, Part I, (Ottawa: Maclean, Roger & Co., 1876.):lx; Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament, (Ottawa: AS Woodburn, 1887):417-419.

dangerous when off-reserve, are deeply ingrained in the euthenic ideal that, rather than becoming full members of Canadian society as indigenous peoples, quarantine in controlled conditions on reserves must enable "Indians" to become "white."

In the eyes of colonial officials, "Indian" males traversed a racial and geographical boundary as they forfeited legally-recognized Indian status, and the right to reside on a reserve, in favour of receiving enfranchisement along with a share of band lands and funds. By crossing this border, enfranchised Indians became new immigrants to a colonializing country superimposed on their own indigenous territories. In this way, reserves were calculated to function in a manner similar to current Immigration Holding Centres where potentially threatening, legally suspicious, or unqualified individuals are geographically segregated in legal limbo while they are assessed for fitness to join Canadian society. Even before Confederation, Sir Francis Bond Head's 1836 treaty had been described as a failed "scheme for deporting all the Indians from the mainland to the Manitoulin Island."[4] "Indians" were "foreign" to the colonizing state that claimed their territories. "Indians" were expected to assimilate or perish as a result of constitutional incapability for civilized existence. The ultimate goal of this process was to excise officially-recognized indigenous identities from Canada and "return" reserve lands to the colonizing state.

5.1 Negotiating Legal Ontologies: First Nations Principles of Good Order

As Canada struggles to understand the vast overrepresentation of Aboriginal persons in prisons, valuable holistic First Nations principles of restorative justice are considered newly-permissible adjuncts to, rather than catalysts for, change throughout the Canadian criminal justice system. The sense that indigenous principles have only recently been annexed to an entrenched legal system tends to obscure important interactions between indigenous and colonial systems of law. Confederation did not completely negate indigenous legal systems, or First Nations' efforts to negotiate within the Canadian system.

As PG McHugh explicates, in the face of British colonial law, First Nations asserted their indigenous ontologies of order in a "historical parallelism that runs from colonial foundation through to the end of the twentieth century and into the present."[5] The English constitutional

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[4] "The Manitoulin Islands – Outrages by the Waquimakong Indians – Armed Force Sent to Arrest Father Kohler and Other Ringleaders," *The Daily Globe*, Toronto, Canada West, 27 July 1863, Volume: XX, No. 183:2.

[5] PG McHugh, *Aboriginal Societies and the Common Law: A History of Sovereignty, Status, and Self-Determination*, (Toronto: Oxford University Press, 2004):vi.

system and common law were transplanted onto territories so that First Nations "engulfed by this system and once marginalized, perforce had to resort to it in order to validate their claims and eke as much as they could from their condition as colonialized people."[6] For First Nations, negotiating the legal ontologies of the colonizing state was a strategy of survival.

Moreover, Mark Walters points out that, regardless of "all the perceived faults of British colonialism, in British colonial law legal systems never simply disappeared; the indigenous *lex loci* either continued at common law, subject to imperial legislation or Crown prerogative, or was held not to have existed in the first place."[7] For example, in the *Delgamuukw* case, Walters pinpoints Chief Justice McEachern's "unjustifiably narrow" misconception of aboriginal rights whereby "instead of defining aboriginal rights by looking to the continuity of (at least part of) aboriginal law, and thus the rights which aboriginal peoples recognize among themselves, aboriginal rights are said to derive from use and occupation of lands."[8] The common law doctrine of Aboriginal rights leads judges to consider the

> continuity of Aboriginal 'identities'. These identities (national, cultural, political, and/or legal), and their concomitant territorial foundations (the lands and resources upon which they were based) pre-dated colonialism, survived (*de facto* at least) colonialism and, it is argued, ought to be recognized and protected today. Second, judges seek to achieve a sense of continuity of 'legal rules and principles': true to the common law tradition, they prefer to locate the legal genesis of today's Aboriginal rights in old judicial precedent. Third, the law of Aboriginal right is concerned in some way with 'inter-systemic' continuity: common law Aboriginal rights derive, in part, from the continuity of Aboriginal customary legal systems, or at least elements of them, within non-Aboriginal legal systems.[9]

Walters defines the "principle of continuity" that supports common law conceptions of indigenous rights.[10] Imperial common law established that

> (i) in uninhabited territories acquired by discovery and occupation or settlement, settlers were presumed to be governed by English municipal law as their 'birthright', as adjusted to local conditions; and (ii) in inhabited territories acquired by conquest or cession, Parliament or the Crown could abrogate or alter local law, but until this power was exercised, local laws, institutions, customs, rights, and possessions remained in force.[11]

For example, in 1803, a Cree "marriage custom was applied not as foreign law but as part of the law of the British empire – there had been *inclusive* continuity of Aboriginal custom *within*

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[6] McHugh, 2004, Op. Cit.:vi.
[7] Mark D Walters, "British Imperial Constitutional Law and Aboriginal Rights: A Commentary on *Delgamuukw v. British Columbia*," *Queen's Law Journal*, (1992):351.
[8] Ibid:352.
[9] Mark D Walters, "The 'Golden Thread' of Continuity: Aboriginal Customs at Common Law and Under the *Constitution Act*, 1982," *McGill Law Journal*, 44, (1999):714.
[10] Ibid:715.
[11] Ibid.

British law."[12] Within this framework, granting Chiefs limited power to legally regulate reserves was both appropriate and practical.

5.1.1 Wikwemikong Unceded Reserve: Regulations for the Maintenance of Good Order

Since formidable state control has never had the omnipotent presence that religious ideologies confer on it, it has not succeeded in entirely dismantling enduring indigenous ways of life. The territories claimed by the Canadian state include many different indigenous languages, nations, and cultures and it is impossible to identify a single shared code of indigenous law. Nevertheless, indigenous communities reinforce strong socio-legal systems that govern life. Indigenous legal traditions, formed on the foundations of kinship and sustainable practices, depend on deliberate communal decision-making and guidance through the wisdom of elders. Henderson explains that, by definition, these *sui generis* rights "do not depend for their existence on consistency with British law."[13] Astounding resilience is drawn from indigenous belonging to the land. Nevertheless, the totalizing aims of colonial power significantly destabilized the functional structures of First Nations communities.

As Manitoulin Island opened for settlement, and the government town of Manitowaning grew, the internal order of Wikwemikong was disrupted as colonial assertions of legal power undermined the authority of the Chiefs. In 1874, the Wikwemikong Chiefs attempted to negotiate an agreement to recognize their roles as principals of societal order by outlining common standards and agreeing that the Canadian legal system would be invoked for more intractable cases. In beautifully-scripted indigenous and English language documents, the Chiefs and leaders of the Reserve outlined regulations that were "proper for the maintenance of good order" in their community.[14]

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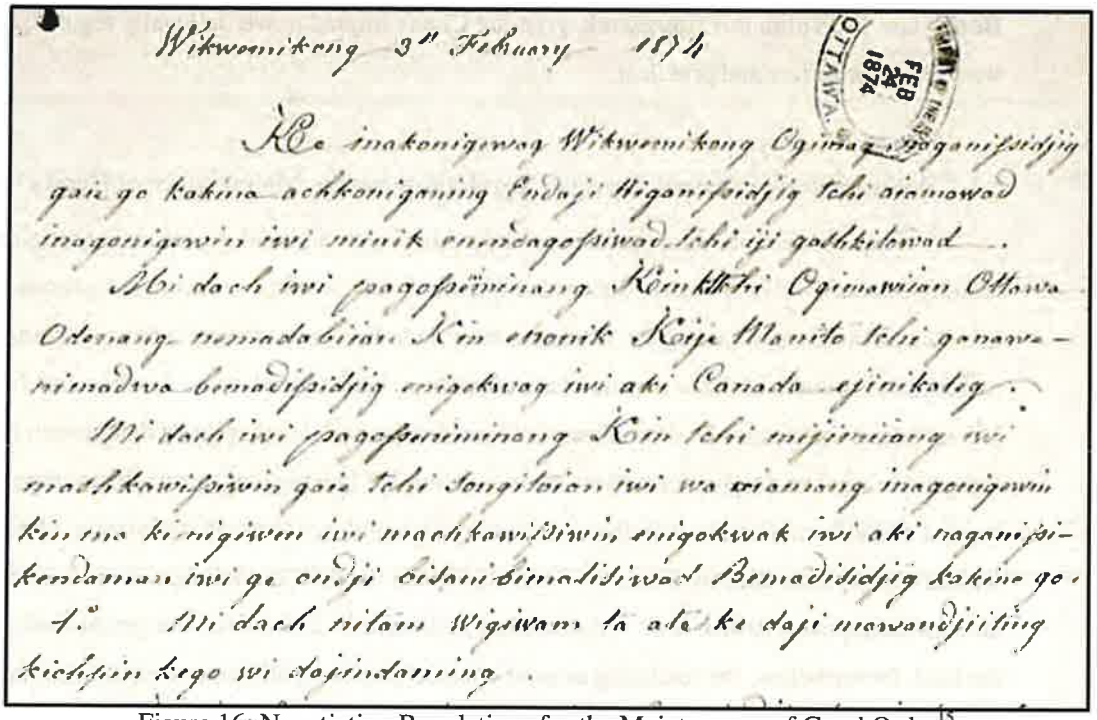
[12] The inclusive principle contrasts with the exclusive principle of continuity which, as in the USA, sees local legal systems as foreign. Walters, 1999, Op. Cit.:717.

[13] James (Sákéj) Youngblood Henderson, "*Sui Generis* and Treaty Citizenship," *Citizenship Studies*, 6(4), (2002):424.

[14] Visiting Superintendent of Indian Affairs JC Phipps to the Minister of the Interior, Indian Branch. 6 February 1874, (Manitowaning), "Manitowaning – Manitoulin Island Unceded Reserve – J.C. Phipps Transmitting Regulations for the Maintenance of Good Order Established by the Chiefs," National Archives of Canada, RG10, Department of Indian Affairs, Volume: 1922, File: 2974, Access Code: 90.



Wikwemikong 3rd February 1874

Ke inakonigewag Wikwemikong Ogimag Oganisidjig gaie ge kakina achkonigaming Endaji Higanisidjig tchi aionowad imaganigewin iwi minik enendageshiwad tchi iji gathkitowad.

Mi dach iwi pagashemimang Kinthkhi Ogimawiian Ottawa Odenang nemadabiian Kin etnonik Kije Manito tchi gonawa-nimadiwa bemadisidjig enigekwag iwi aki Canada ejinikaleg.

Mi dach iwi pagashemimang Kin tchi mijimiang iwi machkawisiwin gaie tchi songitoian iwi wa mianang imaganigewin kin ma kinigiwen iwi machkawidiwin enigokwak iwi aki nagamji-kendaman iwi ge endji aidaui bimaditiwad Bemadidjig kakine go.

1.° Mi dach nitam Wigiwam ta ale ke daji nawandjiting kichijin kego wi dojindaming.

Figure 16: Negotiating Regulations for the Maintenance of Good Order[15]

By sending their regulations in both languages, the Chiefs asserted the parallel legal validity of indigenous words.

The Wikwemikong Chiefs' regulations were sent through Visiting Superintendent Phipps to be legally approved by the Governor General in accordance with procedures in the 1869 *Act for the Gradual Enfranchisement of Indians* stating that the

> Chief or Chiefs of any Tribe in Council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz:
> 1. The care of the public health.
> 2. The observance of order and decorum at assemblies of the people in General Council, or on other occasions.
> 3. The repression of intemperance and profligacy.
> 4. The prevention of trespass by cattle.
> 5. The maintenance of roads, bridges, ditches and fences.
> 6. The construction of and maintaining in repair of school houses, council houses and other Indian public buildings.
> 7. The establishment of pounds and the appointment of pound-keepers.[16]

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[15] Adapted from JC Phipps to the Minister of the Interior, 6 February 1874, (Manitowaning), Regulations Dated 3 February 1874, Signed by Thomas Kinoshameg, Lour Avakegishik, Augustin Kissizizabonve, and Levi Ekatinigakweskong, "Transmitting Regulations," Op. Cit.

[16] Phipps to Minister of the Interior, 6 February 1874, "Transmitting Regulations," Op. Cit.; *Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31st Victoria, Chapter 42*, SC 1869, 32-33, Victoria, c. 6, s. 12.

The Wikwemikong Chiefs acknowledged the religious dominion of the Canadian state by requesting that the "Highest Chief, residing in the City of Ottawa" who had been "appointed by God, to take care of the people living all over the land called Canada… sanction these regulations" and give them the "necessary power to enforce them all over this land, over which you are the Supreme ruler, for the peace and tranquility" of all inhabitants.[17]

In keeping with the needs of the community and the social mores that might be approved of by the assimilative government, the Wikwemikong regulations declared,

> 1. Let there be a house where we can meet when there is anything to be discussed.
> 2. Let no one be allowed to insult either the chiefs or those appointed by them, or to revile any aged person.
> 3. The meeting ought to be respected; no one should be allowed to use any insulting language or joke in the house, and whilst one is speaking.
> 4. During the night time turbulent young men and all boys should keep quiet in the interior of their houses, and no one should be roding about after the night bell has been rung.
> 5. Yong girls especially such as are of a light character, ought to keep quiet in the interior of their houses during the night time.
> 6. No one should bring wisky into this village.
> 7. No drunker should rode about, and if any one is seen drunk, he should be taken up immediately and asked who gave him the wiskey, and if he does not make the declaration, he should be fined himself.
> 8. No one should damage any thing belonging to another, although it may appear old or useless.
> 9. No one should ill treat any animal so as to kill it, none without any exception, how small so ever it may be.
> 10. No one should damage fences around fields or gardens or in any other place.
> 11. When orders are issued to make or repair the roads, every man ought to go to the work, if he is in good health.
> 12. If any one is engaged to work, he ought to be payed, when he has finished his work.
> 13. If two persons make an agreement about something, they are bound to stand by it as far as it is just.
> 14. Let no one be robbed of his property.
> 15. Let no one take what belongs to another without having previously asked for and obtained permission.
> 16. Let no one strike his fellow man, although he be in a state of drunkeness.
> 17. When there are fruit trees planted in a garden or field, let no one steal the fruits there of.
> 18. Let all the males of animals be altered or cut, except such as are deemed necessary to remain entire.
> 19. Let no one keep a dog that use to kill or to bite sheep.
> 20. If any one willfully violates the regulations, here written down, he is to be taken up, brought before the Indian Chiefs in order to be judged by them and he ought to submit to their judgement.
> 21. But if any one does not submit to this judgement, he is to be given up to the english court.

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[17] Phipps to Minister of the Interior, 6 February 1874, "Transmitting Regulations," Op. Cit.

> 22. If any one having been summonded to desist from something continues nevertheless thus doing worse, he is to be given over to the English court.[18]

At the Wikwemikong Council where he was presented with these regulations, Phipps was asked to impress the "urgent necessity for sound regulations being established by law, for preserving order and regulating the internal affairs" of the reserve, on the government Minister to whom they would be sent.[19] The Wikwemikong Council expressed their desire to curb insobriety, restrain "white arrivals running at large," and prevent vandalism to fences.[20] The Council expected to go beyond taking part in the creation of regulations: they saw the need to exercise "power… to award punishment for infraction of such regulations" by assessing monetary or grain fines as well as public service through labour.[21] The enforcement power of the Wikwemikong Council would be "subject to appeal" to Canadian authorities through the judicial power of Phipps.[22]

Phipps was of the opinion that some form of state-approved local regulations were necessary for the inhabitants of the Unceded Reserve because "respectable and well conducted Indians" were "frequently annoyed" by inebriated and trouble-making individuals who would "refuse to submit to the decisions of their chiefs" because they had "no power to enforce them."[23] The authority of the Chiefs of Wikwemikong was shaken by a changing socio-legal order where the Canadian state claimed dominance. Ironically, the presence of a local Indian Branch representative was ineffectual in establishing good order among both "Indians" and "whites." It appears that the hope was that, if colonial power could be employed in support, rather than subjugation, the grounded authority of the Wikwemikong Chiefs and leaders might meet common goals of both societies.

The Indian Branch was not willing for this considered approach to go beyond their confines to the Governor General, as the Chiefs requested. Paradoxically, the very harmony of these regulations was used against the Wikwemikong Chiefs. Vankoughnet, Deputy Superintendent of the Indian Branch, observed that regulations 1, 2, 3, 4, 5, 6, 7, 10, 11, 16, 18, 19, 20, 21, and 22 were in accordance with the *Act* while regulations 8, 9, 12, 13, 14, 15 and 17 were "very elementary natural laws," which, in the case of regulation 9, would "prevent one from

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[18] The original document's spelling and terminology has been kept intact in this quotation. Phipps to Minister of the Interior. 6 February 1874, "Transmitting Regulations," Op. Cit.
[19] JC Phipps to the Minister of the Interior Indian Branch, 16 May 1874, (Manitowaning), "Transmitting Regulations," Op. Cit.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.

killing a mosquito."[24] In the end, Phipps was instructed to relay the message that "as they are already in force either as part of the moral law, or by the laws of the land," it was not necessary to confirm the regulations with the Governor General; however, if they could draft rules that aligned with the *Indian Act* and would "be of practical benefit to their Band," the Superintendent General might be persuaded to submit them to the Governor General.[25] The Indian Branch also determined that the Chiefs' request for power to enforce the regulations with fines and labour was beyond the power of either the Superintendent General or Governor General of Canada to confer.[26] In this way, the Wikwemikong Council's efforts to use Canadian legislation as a basis for negotiating practical socio-legal solutions to problems caused by the destabilization of indigenous authority on the reserve, erratic regulation of settlement, and ineffective application of state law were dismissed by the Indian Branch.

Meanwhile, by 26 May 1874, not long after the Chiefs drafted their regulations on 3 February 1874, the Canadian Parliament had assented to new Indian legislation. The 1874 *Act to Amend Certain Laws Respecting Indians, and to Extend Certain Laws Relating to Matters Connected with Indians to the Provinces of Manitoba and British Columbia* discarded the provision for indigenous regulations and focused on the legal power of the state to deter liquor traffic with Indians and on reserves, require honest testimony from Indians in criminal cases, and mete out fines and terms of imprisonment. Enfranchisement was a "gradual" process that had to be earned step-by-step and yet was presented as an inevitable goal of "Indians": a goal that some might be so eager to accomplish that it was necessary to caution that "any Indian falsely representing himself as enfranchised under this Act when he is not so, shall be liable, on conviction before any one Justice of the Peace, to imprisonment" for up to three months.[27]

5.2 The *Indian Act*: Isolation and Transformation

The 1876 *Indian Act* introduced a chimera in the legal pantheon of the Canadian state: the ghostly figure of a lone "Indian." The *Indian Act* was a consolidation of previous legislation constructed for the purpose of ending what was thought to be a fundamental dissonance between

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[24] "Memo By Deputy Superintendent of Indian Affairs L Vankoughnet on Certain Rules and Regulations Submitted by the Indian Chiefs of Wikwemikong, on the Manitoulin Island, for approval by His Excellency the Governor in Council, under the provisions of the Act 32-33 Vic Cap 6 Sec 12," "Transmitting Regulations," Op. Cit.
[25] to JC Phipps, 8 June 1874, "Transmitting Regulations," Op. Cit.
[26] Ibid.
[27] *Act for the Gradual Enfranchisement of Indians,* 1869, Op. Cit.

"Indian" identities and capable membership in the Canadian state. The false division constructed between indigenous identities and lawful existence did more than relegate indigenous persons to places of exception from full membership in the Canadian state: it placed many aspects of their existence outside of the law.

In the *Indian Acts* of 1876, 1880, and the *Indian Advancement Act* of 1884, the Government of Canada claimed the right to direct "unilaterally, every aspect of life on the reserve and to create whatever infrastructure it deemed necessary to achieve the desired end – assimilation through enfranchisement and, as a consequence, the eventual disappearance of First Nations."[28] The 1876 *Indian Act* assumed that Indians must be divested of their indigenous heritage in order to become individualized Canadian citizens or die out as remnants of a single "race" overcome both physically and culturally by greater European civilizations. As guardians of Indian wards, the administrative branch that became the Department of Indian Affairs held such legal assimilative power that indigenous "traditions, ritual life, social and political organization, or economic practices could be proscribed as obstacles to Christianity and civilization or could be declared by Parliament, as in the case of the potlatch and sun dance, criminal behaviour."[29] Evidence of organized indigenous cultures undermined the foundations of a colonizing state which located its legitimacy in the myth of claiming unorganized geographical territory for a European Crown.

Justice Sinclair explicates the ways in which this occurred in the Canadian prairies. Indigenous treaty negotiators were not ignorant of the fact that they were

> being asked to surrender their rights to exclusive use of large parcels of land. However, it was also clear that they wanted lands for their exclusive use as tribal homelands – a concept the government understood but that it took advantage of and perverted into a policy to corral and control Indian movement and growth.[30]

Part of the colonial plan was to prevent indigenous groups from gathering in meaningful ways. In 1884, amendments were made to the *Indian Act* to outlaw indigenous Potlatch and Sundance ceremonies.[31] The intent of Potlatch and Sundance laws was to "remove tribal traditions from their positions of importance in the lives of Aboriginal people."[32] Prosecutions under these

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[28] John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):21.
[29] Ibid.
[30] Justice C Murray Sinclair, "Suicide in First Nations People," *Suicide in Canada*, Eds. Antoon A Leenaars et al., (Toronto: University of Toronto Press, 1998):169-170.
[31] *An Act Further to Amend "The Indian Act, 1880,"* SC 1884, 47 Victoria, c. 27, s. 3.
[32] Sinclair, 1998, Op. Cit.:169-170.

provisions of the *Indian Act* were often carried out against traditional indigenous leaders.[33] When convicted, the sentences involved hard labour.[34]

In turn of the century Manitoba, many of the inmates at the Stony Mountain Penitentiary had been convicted under these xenophobic laws.[35] By relocating indigenous leaders to carceral institutions, their ability to provide direct guidance was reduced and the colonizing government effected a strategic demonstration of their hegemonic power over indigenous communities.[36] For example, when a man from Kahkewistahaw's Band, Saskatchewan, was jailed for a month in Regina for holding a "give away dance," Indian Agent JP Wright hoped that this "would have its due effect upon the others" in encouraging fear of the law and obedience.[37]

Sinclair establishes that federal and provincial authorities gave directives to prosecutors, magistrates, and judges "exhorting and, in some cases, demanding that they sentence Indian offenders harshly so as to make it clear to their fellow tribesmen that they must abide by the laws of Canada."[38] By quarantining indigenous communities on reserves, removing indigenous cultural influences, and exposing "Indians" to idealized forms of Canadian society, Indian Affairs hoped that they would imbibe "white" culture and be racially transformed. Loss of "Indian status" through enfranchisement was more than an ill-conceived reward for cultural change; rather, Indian Affairs desperately hoped that it would invoke an ethnic metamorphosis from "Indian" to "white."

At times, doubts arose within the DIA that this policy "formulated for the purpose of taking hold of Indians in their untutored state and gradually educating them to fitness for the status of full citizenship" would work because they observed that "any halt in the earlier stages of progression is the immediate precursor of retrogression, and it may probably be asserted, that in the more advanced stages of the march, the failure to go on, is in some degree, fraught with kindred danger."[39] The danger in the later steps of the march was that bands would turn their knowledge of the colonizing state to the purposes of securing indigenous self-governance rather

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[33] Sinclair, 1998, Op. Cit.:169-170.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898*, (Ottawa: SE Dawson, 1899):136.
[38] Sinclair explains that these directives were particularly influential because "magistrates did not enjoy any type of judicial independence, holding office 'at pleasure' of the government" and "most of the magistrates in the Northwest Territories (before the western provinces were created) were employees of the federal government, foremost among them being Indian agents and RCMP (NWMP) officers." Sinclair, 1998, Op. Cit.:169-170.
[39] *Annual Report of the Department of Indian Affairs,* 1898, Op. Cit.:xxvi.

than assimilative enfranchisement. Reserves, then, were more than places of paternalistic protection for the enculturation for Indians: they were seen as places on which to confine "Indians" for the protection of Canadians.

Legal "Indian status" and segregated lands were so intensely linked in the geographical imagination of colonizing minds that, as Robin Jarvis Brownlie elucidates, whether they had formally engaged the enfranchisement process or not, "Indian agents who made the decisions about status and benefits tended to view long-term off-reserve residents as non-Indian."[40] Geographic proximity encouraged the converse as well:

> Some individuals were referred to as 'halfbreeds' or 'non-treaty Indians' but given relief and other assistance by the agents. On the other hand, since non-treaty Indians and those belonging to a different band had no legal right to reside on a reserve, they could be summarily expelled by the agent. DIA officials thus functioned as gatekeepers to Indian status.[41]

Department of Indian Affairs officials kept a wary watch on persons who did not have Indian status yet maintained social and familial ties to reserve communities.

Although enfranchisement could occur without an individual's consent, the requirements for enfranchisement could also be used as a guide for how not to qualify by those who would not officially discard their indigenous identities in favour of voting in a social system that rejected them. Indigenous identities persisted and reserves, meant to be temporary sites that would later become available for other government uses, remained spaces of exception from adult membership in the Canadian state. In this way, "status Indians" were socially, legally, and geographically segregated from public life. Moreover, a racialization of diverse indigenous peoples stereotyped certain phenotypical and cultural traits as "uncivilized" and perilously out of place beyond reserve boundaries.

5.3 Peroratio: Indigenous Interactions

Although "Indians" have been heavily laden by the state's assimilative functions, as state power operated within the varied circumstances of individuals' and communities' lives, First Nations peoples altered its outcome to something very different from assimilation: the concurrence of indigenous identities with active engagement in the Canadian state. Olive Patricia Dickason has been criticized for her argument that First Nations are amongst Canada's "founding

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[40] Robin Jarvis Brownlie, "'A Better Citizen Than Lots of White Men': First Nations Enfranchisement – an Ontario Case Study, 1918-1940," *The Canadian Historical Review,* 87(1), (2006):29-52.
[41] Ibid:36.

peoples."[42] The main counter-point is that Dickason elides action and intention. While it is arguable that the actions of all people living on territories later confederated as Canada somehow influenced what it became, the word "founding" connotes strong intentionality. A balanced approach recognizes the complexities of diverse indigenous interactions with colonizing forces as they negotiated everyday survival and their own visions of homeland. Only hubris could allow founders to believe that they could truly predict the full scope of outcomes related to their actions. Dickason succeeds in demonstrating that First Nations people played larger and more divergent roles in the making of Canada than romantic tales of the important, yet gritty, economies of fur-trading imply. Although some First Nations peoples may have intended to support colonial powers in some ways, it is more precise to say that there were a range of responses to the colonial project as indigenous persons shouldered the burden of previously unknown diseases and negotiated their positions in an unpredictable global empire.

From a British perspective, colonizing powers may have proved their prowess through engulfing the lands and peoples eventually organized under the name "Canada" as they painted maps pink with Empire. However, the international imperial victory sought abroad did not quell the countless international responses by First Nations within Canada. Notwithstanding the greedy appetites of colonialism, this chapter makes evident that indigenous communities had their own laws, their own systems of regulating community life, and their own approaches to international relations with the British Empire. Colonial policies and legislation such as the *Indian Act*, based on assumptions of the inevitable assimilation or death of indigenous peoples, were unsettled by the persistence of First Nations as rational cultural communities within expanding colonial territories. Colonial officials' segregative geographical tactics in response to this threat to their legitimacy flowed from settler governments' rapacious requirements for land.

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[42] Olive Patricia Dickason, *Canada's First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):xi.

Chapter 6

Criminalizing the "Indian": Unrest and Assimilation

Assimilation is not what it once was. Contemporary use of the term "assimilation" to describe government approaches to First Nations people tends to imply cultural assimilation. While this aspect of assimilation is very meaningful, it tends to obfuscate the driving force behind the creation of the assimilation program: a nascent Canadian state struggling to bring together a vast geography under the principles of order and good government. Whatever politics direct the means of achieving it, a government, particularly in its formative stages, has no legitimacy unless it can offer societal order. The cruel and unethical aspects of cultural assimilation recognized today were not the full extent of historical understandings of the term. Paradoxically, in the colonial rhetoric, deriving cultural assimilation from the larger momentum of nation-building was almost a humanitarian effort on the part of a paternalistic government.

The hard line of what colonial and Canadian governments saw as necessary to bring order to "the Indian problem", however, meant that all Canadian citizens would be "white men."[1] The racialized aspect of assimilation added an acutely physically invasive component to the psychological torture of cultural assimilation. In colonial aspirations, "Indians" were to cease to exist whether this result came from extinction or reproducing with "white" partners until all visible, as well as cultural, traces disappeared. As John Milloy saliently observes, although colonial and Canadian legislation purported to "solely" concern persons with "Indian" status, the "assumption behind them was the same for all Aboriginal people": whether "Indian," Métis, "non-status Indian," or Inuit, "each in their own time and place, as their homeland was encompassed by the expanding Canadian nation, would be expected to abandon their cherished life ways."[2] Moreover, governmental "distinctions between authentic and inauthentic natives came to serve a number of ends associated with the management of indigenous peoples and the

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[1] Women's official identities in the colonial system were determined patrilineally even though this did not accord with the more balanced and matrilineal social organization of many First Nations. For a deeper view of the realities of women's experiences, self-perceptions, and differing geographical understandings of what colonizers considered "The West," see Sarah Carter, Lesley Erickson, Patricia Roome and Char Smith, eds., *Unsettled Pasts: Reconceiving the West through Women's History*, (Calgary: University of Calgary Press, 2005).

[2] John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):21.

measurement of their disappearance."[3] In effect, legal "Indian status" was somewhat malleable in the paternalistic hands of the DIA and could be used to either claim or deny responsibility. First Nations peoples who did not have legal status were nevertheless racialized as "Indians" and were of some interest to the DIA and law enforcement as such. Since racialized physical and cultural characteristics of First Nations people were not part of colonizers' imagined geography of Canada, any perpetuation of indigenous peoples on state territory was a threat to good order and legitimacy.

Although paternalism was the tenor of departmental rhetoric, in the late nineteenth century, the deceptively munificent face of the DIA came under criticism from Canadian settlers. Conflicts between Aboriginal and colonial powers on the frontier of the Canadian North-West were frequently addressed through policing. The north-westward movement of the Canadian frontier is itself a colonial construct that relies on a geographical imagination that privileges Euro-Canadian "progress" advancing from a state centralized in a "civilized" east. For First Nations living in the lands where they were created and had inhabited since "time immemorial," the very idea of a frontier was irrelevant until they clashed with the colonial powers that gave those words significance. In as much as they were considered unincorporated into the future of a legal Canadian state, and yet subject to the law, indigenous persons interacted with Canadian law enforcement in divergent ways that illustrate the mutual foreignness of differing legal and geographical ontologies.

6.1 Conflicts: Canada's North-West Frontier in the National Imagination

As the map of Canada changed strikingly in the late nineteenth century, an international struggle for power between Canada, the USA, and First Nations groups took place. Dickason aligns the first "Métis resistance" with the transfer of Hudson's Bay Company (HBC) lands to Canada in 1870.[4] Conflicts between indigenous peoples, Métis, and colonial powers on both sides of the Canadian-US border led to the 1873 Cypress Hill Massacre. By the following year, the Indian Affairs Branch formally recommended the "appointment of a few sub-agents and some

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[3] Jeffrey Sissons, *First Peoples: Indigenous Cultures and Their Futures*, (London: Reaktion Books, 2005):28.

[4] Dickason notes that this transfer "increased Amerindian militancy" and led to a range of disputes on the parts of indigenous leaders who disputed the right, and ability, of land to be sold. Olive Patricia Dickason, *Canada's First Nations – a History of Founding Peoples From Earliest Times*, 3rd ed., (Don Mills: Oxford University Press, 2002):276-277, 285.

simple system of Indian Police, which will bring distant Tribes more within the reach and better control of the Government."[5]

The second resistance, involving Métis, First Nations, US, and Canadian actors, occurred as the buffalo, a vital part of indigenous subsistence economies, declined and the Canadian Pacific Railway (CPR) was being built to add another unifying line to the map of Canada and encourage western settlement.[6]

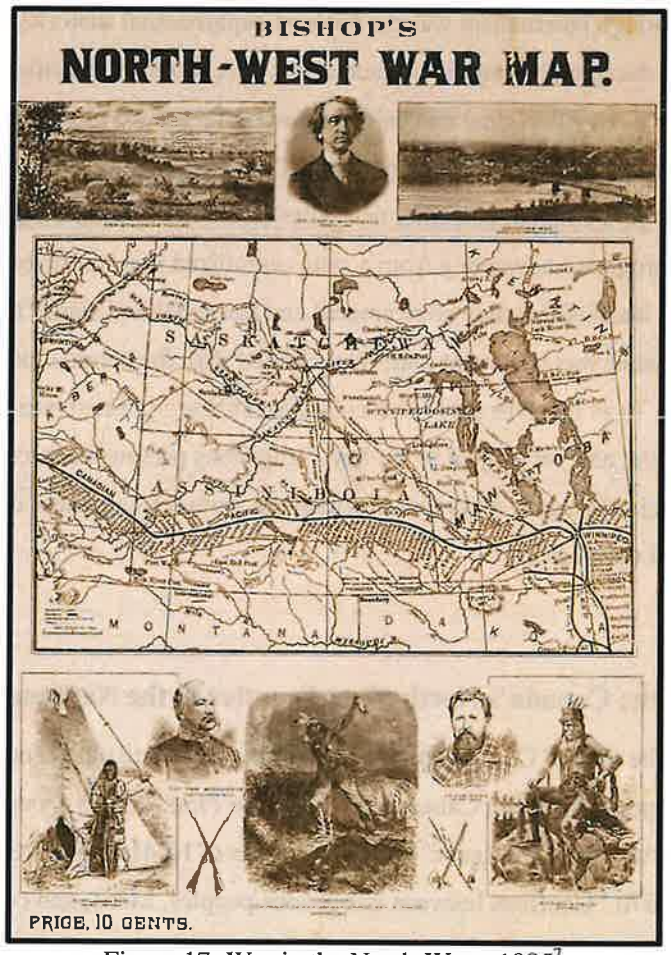

Figure 17: War in the North-West, 1885[7]

Conflicts on Canada's North-West frontier as state law was asserted over indigenous territories and peoples were prominent in the national imagination.

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[5] Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1874*, Part 2, (Ottawa: Maclean, Roger & Co.):68.

[6] Dickason, 2002, Op. Cit.:285.

[7] Adapted from "Bishop's North-West War Map [cartographic material]," Montreal: George Bishop Eng. & Ptg. Co., 1885, National Archives of Canada, Microfiche NMC 15955, Library of Congress class No. G3471.S57 1885 .G4 H2, Access Code: 90, Copyright: Expired.

Entwined as civilizing arms of the state, AG Irvine, Commissioner of the North-West Mounted Police, recounted in the 1880 *Annual Report of the Department of Indian Affairs*,

> [s]ince the disappearance of buffalo the Indian situation has assumed quite a different aspect. As long as the buffalo lasted the Indian was independent and self supporting, independent and contented. Now, however, he is in a very different position, his only means of support is virtually gone, and he has to depend on the Government for assistance, being forced, in so doing, to remain about the Police Posts, Indian Agencies or other settlements.[8]

The southward movement of dwindling buffalo herds had been something of a reprieve for policing since it kept the "most miserable existence" of remaining hunters beyond the International Boundary Line in the United States of America. Commissioner Irvine predicted the increase of the Indian population that would occur once the buffalo were gone and the hunting population returned. Irvine warned that this "population, too, will, irrespective of the aid received from Government, be a starving one, a dangerous class requiring power, as well as care, in handling."[9] Insightfully, Irvine saw the "advancement of civilization" as one of the reasons that the NWMP must be increased. Irvine reasoned that the US "military had no trouble with the Indians until settlers appeared on the scene."[10] Whereas the HBC had little policing power, by the beginning of the second resistance in 1885, the Northwest Mounted Police was an authoritative force on the Canadian Plains.[11]

6.1.1 Competing for Survival, Competing for National Territory: Mistahimaskwa's (Big Bear's) Response to Changing Landscapes

Big Bear, one of the most well-known chiefs on the Plains, sought unity amongst indigenous peoples as an essential strategy to resist western settlement and, in so doing, "seriously alarmed Ottawa."[12] Big Bear refused to receive gifts before the negotiation of *Treaty Six* because he did not want to be compelled to concede to the Canadian government.[13] Dickason explains that Big Bear was especially opposed to the treaty provision that "Canadian law would become the law of the land; as he perceived it, the treaty would forfeit his people's autonomy."[14]

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[8] North-West Mounted Police Force Commissioner AG Irvine, "Part II North-West Mounted Police Force Commissioner's Report," *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1880,* (Ottawa: Maclean, Roger & Co., 1881):6.
[9] Ibid.
[10] Ibid.
[11] Dickason, 2002, Op. Cit.:285.
[12] Ibid:277.
[13] Ibid.
[14] Ibid.

He did not put his signature on the treaty in 1876; however, in 1882, as settlement progressed, diseases weakened indigenous populations, and the resources of First Nations were increasingly strained, Big Bear was compelled to sign the treaty in exchange for rations for his band.[15] Nevertheless, Big Bear did not abandon his desire to maintain self-determination.

In a time of great deprivation, withholding rations was Indian Affairs' "principal weapon for bringing people into line."[16] Dr. Kittson of the NWMP made an empirical analysis of the rationing situation and warned his superiors of the potential consequences of widespread hunger.[17] Kittson wished to "disabuse the authorities at Ottawa of an erroneous idea generally prevailing" that there was enough small game in the northern Plains.[18] He estimated that there was not enough game in one hundred square miles to feed a small family for a year.[19] Hunting could not be a substitute for rations "if the Indians are to be kept on their Reservations."[20] Arguing that they "must assume that an Indian adult required as much food as a white man," Kittson used information gathered from asylums, prisons, and infirmaries in differing locations to demonstrate that the rations were indeed falling short.[21] Kittson movingly described gaunt First Nations people begging for food and hoped, "When I tell you that the mortality exceeds the birth rate it may help you to realize the amount of suffering and privation existing among them."[22] Appealing to the government's need to maintain order, Kittson expressed surprise that the starving indigenous population had been "so patient and well disposed" and warned that this might be "'the calm before the storm', but human suffering must have its limit."[23] Even though Kittson's determined message was circulated within Indian Affairs and there were gestures of mercy, assimilative priorities prevailed. The DIA disapproved of an incident during this period in which the NWMP decided to feed seven thousand people from police rations.[24] Indian Affairs thought that this action impeded compliance.[25]

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[15] Dickason, 2002, Op. Cit.:277.
[16] Ibid:278-279.
[17] Kittson's correspondence is found in "Report from D. Kittson of the Northwest Mounted Police Stationed at Fort MacLeod, Concerning the Insufficiency of the Rations Issued to the Indians in the Northwest Territories," 1880-1915, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3726, File: 24811, Access Code: 90.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Dickason, 2002, Op. Cit.:278-279.
[25] Ibid.

Big Bear grappled with colonial systems of government and ontologies of ownership in order to negotiate indigenous autonomy. Big Bear desired to create a contiguous indigenous territory by juxtaposing the reserves of several Plains Cree chiefs; however, the DIA discovered this pattern and chose to ignore treaty provisions that allowed chiefs some choice in their allocations.[26] In 1884, Big Bear instigated a Thirst Dance on Poundmaker's reserve in order to establish a First Nations representative who would serve a four-year term.[27] Dickason writes that North-West Lieutenant-Governor Edgar Dewdney combatted this plan through strategic control of rations as well as an amendment to the *Indian Act* that allowed any Indian on another reserve without DIA approval to be arrested.[28] Dewdney's geographical control was later tightened into the "Pass System" used to restrict any unsanctioned off-reserve movement.

Meanwhile, the Métis were also experiencing lean times as they advocated for rights to self-determination as a unique people group born of European and First Nations ancestry. The still very controversial Métis leader Louis Riel was calling for rights as British subjects when he set up a provisional government in March 1885.[29] First Nations and Métis systems of order were struggling with the unsettling influence of hunger resulting from the misuse of lands and resources during the onslaught of settlement. Big Bear intervened to stop his discontented war chiefs when they plundered Frog Lake HBC stores; however, the women and children that he saved, along with the HBC representative, did not discount that nine people had already been killed.[30] At first, terrified settlers barricaded themselves in Fort Pitt, the NWMP garrison.[31] After conferring with each other, the settlers decided to surrender to Big Bear and he allowed members of the garrison to depart before taking over Fort Pitt on 15 April.[32]

Although the CPR was still in a rather disjointed phase, the Federal Government's ability to raise forces against the uprising was much greater than it would have been a short time earlier. After fighting the Battle of Batoche against the overpowering Canadian militia, Riel surrendered

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[26] Dickason, 2002, Op. Cit.:280.
[27] Ibid:282.
[28] Ibid.
[29] Kevin Bruyneel argues that Louis Riel "was and remains a necessary invention for the production of Canadian political identity and sovereignty, including the colonial and racial legacies intertwined in this production." Brian Osborne considers the numerous shifting interpretations of Louis Riel: public discourses and the disjuncture between memory represented in physical monuments and changing perspectives. Kevin Bruyneel, "Exiled, Executed, Exalted: Louis Riel, *Homo Sacer* and the Production of Canadian Sovereignty," *Canadian Journal of Political Science*, 43(3, September), (2010):712; Brian S Osborne, "Corporeal Politics and the Body Politic: The Re-Presentation of Louis Riel in Canadian Identity," *International Journal of Heritage Studies*, 8(4), 2002: 303-322; Dickason, 2002, Op. Cit.: 287-288.
[30] Dickason, 2002, Op. Cit.:288.
[31] Ibid.
[32] Ibid.

on 15 May 1885, Poundmaker on 26 May 1885, and, on 2 July 1885, Big Bear voluntarily "walked into Fort Carlton to surrender to a startled sentry."[33]

Figure 18: Big Bear in Leg Irons, NWMP Regina Barracks, 1885[34]

The government and judiciary were presented with the task of prosecuting a large number of people who fit into three distinct governmental categories of membership in Canada. In total, there were eighty-four trials and one hundred twenty-nine people were imprisoned.[35] The eight

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[33] Dickason, 2002, Op. Cit.:289.

[34] The National Archives' description of this photograph explains, "Cree chiefs who were involved in North West Rebellion of 1885, in leg irons, photographed outside the North-West Mounted Police barracks, Regina, Sask., 1885." Adapted from OB Buell, National Archives of Canada, C-001873, "Mistahi maskwa (Big Bear ca. 1825-1888), a Plains Cree chief," Item No. RO1L18, Box 02690, Other Accession No. 1966-094 NPC, Copyright: Expired.

[35] Seventy-one trials were held for treason-felony, twelve for murder, and Riel was tried for high treason. Of the forty-six Métis persons imprisoned, nineteen were convicted, one was hanged, and seven were conditionally discharged or not brought to trial. Of the eighty-one "Indians" imprisoned, forty-four were

First Nations individuals who were hanged together at Battleford on 17 November of the same year were meted out a severe penalty. Nonetheless, those in prison fared extremely poorly. Prison terms were "virtual death sentences" for the indigenous people convicted for their involvement in the uprising.[36] Three chiefs sentenced to three years' imprisonment suffered so acutely that they had to be released before serving their full terms and they died within a year.[37] In the end, all of the First Nations people convicted of felony treason were pardoned before they served the complete terms of their sentences; however, Big Bear was the last prominent prisoner of the North-West Rebellion.[38]

As an imprisoned "Indian," Big Bear was a major political symbol of colonizing state power. His hair was shorn and he was clothed in colonial garb.[39] It is evident that police regulators understood the demeaning power of forcibly cutting indigenous persons' hair. They later stipulated that, although every other "convicted prisoner" in the Regina Guard Room where Big Bear had been kept should "have their hair cut short" on admission, no "Indian Prisoner's hair is to be cut without the express order of the Commanding Officer."[40] Several years had passed when an Indian Agent from Gleichen, Alberta, wrote to the Secretary of the DIA concerning the NWMP lockup where "many Indians are sent... for various offences, i.e., more than we would like."[41] The keeper of the NWMP lock-up had informed the Indian Agent that he was "not authorized" to cut the hair of imprisoned "Indians."[42] The Indian Agent regretted this lack of authority because if the keeper "carried it out, it would tend [to] lessen the number of Indian offences."[43] The Indian Agent rationalized that the "Indians do not think that it is much punishment to be committed to the place referred to, the cutting of their hair would strike them

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convicted, eleven sentenced to hang, and three of the hanging sentences were commuted to life in prison. Two Canadian citizens of European ancestry were imprisoned and both were acquitted of treason-felony. Dickason, 2002, Op. Cit.:290.

[36] Ibid.

[37] Ibid.

[38] Ibid:290-291.

[39] Ibid:291.

[40] "North West Mounted Police Rules for the Guidance of Prisoners in the N.W.M.P. Guard Room Regina," "Regulations for Prisoners Confined in Police Guardrooms," 1893, National Archives of Canada, RG18: Royal Canadian Mounted Police, Volume: 79, File: 253-93, Access Code: 90.

[41] Indian Agent to the Secretary of the DIA, 14 May 1903, (Gleichen, Alberta), "Correspondence Regarding the Sale of Intoxicants to the Indians in Manitoba and the Northwest Territories," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3981, File: 158693, Access Code: 90.

[42] Ibid.

[43] Ibid.

much harder."[44] DIA Law Clerk Reginald Rimmer wrote a response to this Agent which the centralized Indian Affairs adopted in their formal reply.[45]

If the Regulations of any carceral institutions did not "require that the prisoners shall submit to the cutting of their hair," Indian Affairs saw "no reason for suggesting any discrimination against an Indian."[46] It was "understood" that the "Blackfeet almost universally allow their hair to grow long and would regard any interference with it as the greatest indignity; and it would be very similar to the branding of a white man."[47] Although their understanding of the dehumanizing humiliation that this practice could cause was not in conflict with that of the Indian Agent, in this case, a different conclusion was reached. The Department decided that cutting hair is "a punishment not to be inflicted except where white men are liable to the same treatment."[48] Perhaps what happened to Big Bear influenced their determination in this course of action.

While Big Bear remained in prison, a petition from Cree Chiefs emphasized their loyalty to the Queen and maintained that by "punishing those concerned in the uprising, with various terms of imprisonment, the law was righteously enforced, and that the infliction of these penalties will have the happy effect of deterring other evil disposed persons from attempting to disturb the peace of the Country in future."[49] However, the petition also included a statement of admiration for the mercy accorded to prisoners released after a short period as well as an expression that the Cree Nation would appreciate the release and pardon of the last prisoner, Big Bear.[50] DIA Assistant Commissioner Hayter Reed made the case that, if Big Bear were released, it should be made to appear to be a result of the loyal Chiefs' petition, so that they might have more influence over him.[51]

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[44] Indian Agent to Secretary of the DIA, 14 May 1903, "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[45] Law Clerk Reginald Rimmer to the Deputy Superintendent General, 1903 (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.; Secretary of the DIA JD McLean to Indian Agent Markle, 26 May 1903 (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Petition from Chief Mistawasisis, Chief Attakakoop, Chief Twatt, and Chief John Smith to His Honor the Indian Commissioner Regina. 15 January 1887. Witnessed by Owen Hughes MNWC, L Clark HBC, and Thos McKay, (Prince Albert, NWT), 1887, "Prince Albert – Petition from Cree Chiefs requesting the release of 'Big Bear' from prison," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3774, File 36846, Access Code: 90.
[50] Ibid.
[51] Assistant Commissioner Hayter Reed to the Superintendent General of Indian Affairs, 29 January 1887, (NWT), "Prince Albert – Petition from Cree Chiefs," Op. Cit.

Big Bear was retained when the others were not partly because his absence encouraged his band to split up and settle with other bands.[52] For the DIA, this newly-freed land brought them one step closer to the completion of their assimilation program. It was feared that these dispersed individuals would regroup with Big Bear upon his return.[53] Deputy Superintendent General Vankoughnet advanced the idea to John A Macdonald that Big Bear should be held until the group of over five hundred fully dispersed.[54] Big Bear petitioned the government to give his band clemency because he believed that they would die if they did not receive assistance before the winter.[55] For the time being, Big Bear would remain in the Stony Mountain Penitentiary in Manitoba.[56] Although not asked to report on the health of Big Bear, the Surgeon General of the Manitoba Penitentiary advocated for the release of his patient whose health was so acutely aggravated by imprisonment that it could lead to death from confinement.[57] On 4 February 1887, Big Bear was released on the order of the Governor General.[58] Shortly after his release, Big Bear died.[59]

As a result of the North-West Rebellion, the federal government's assimilation program was strengthened by new devices in the national imagination: the victory of the Canadian state over rebels in battle, a prominent large-scale demonstration of the state's legal system, and the menacing deterrents of the imprisonment or hanging of First Nations peoples. Despite this gory nationalistic narrative, some of the DIA officials and First Nations leaders who actually experienced or witnessed the suffering on the Plains first-hand appeared to move closer to concession, if not compromise, after the Rebellion. Nonetheless, Indian Affairs was even more vigilant in confining First Nations peoples to reserves and they enlisted the police in their efforts. More Indian Agents were sent to the North-West, the NWMP grew, and pseudo-legal measures such as the Pass System criminalized Indian identity outside of reserve borders.[60]

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[52] Assistant Commissioner Hayter Reed to the Superintendent General of Indian Affairs, 29 January 1887, (NWT), "Prince Albert – Petition from Cree Chiefs," Op. Cit.
[53] Reed to Superintendent General of Indian Affairs, 29 January 1887, "Prince Albert – Petition from Cree Chiefs," Op. Cit.
[54] Vankoughnet to Sir John Macdonald Superintendent General of Indian Affairs, 5 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs," Op. Cit.
[55] Dickason, 2002, Op. Cit.:290.
[56] To Deputy Minister of Justice GW Burbridge, 11 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs requesting the release of 'Big Bear' from prison," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3774, File: 36846, Access Code: 90.
[57] Department of Justice to Deputy Superintendent General of Indian Affairs Vankoughnet, 21 February 1887, (Ottawa), "Prince Albert – Petition from Cree Chiefs," Op. Cit.
[58] Ibid.
[59] Dickason, 2002, Op. Cit.:290-291.
[60] Ibid:293.

6.1.2 North-West Borders

Depicting "Indians" as "uncivilized" threats to the settlement of the lawful Canadian dominion, 1887 newspapers reports continued to warn of aggression in the west. Calling for government vigilance, the *Medicine Hat Times* decried the "tricks" of the "Untutored Wards of the Nation."[61] The fount of this distress was horse theft and frightening incidents such as that experienced by the son of Mr. Gobbett who was allegedly shot at when "Indians called for" his father's horses and were disappointed to find that they were not in the stable.[62] The "people in Medicine Hat," presumably settlers, were angry about the "depredations committed" by the government's "pet children."[63] *The Times* predicted that the citizens of the western territories would have to guard themselves against "lawless redskins" by the pedantically civilized method of forming a law and order committee.[64] Terse newspaper reports were the public expression of more detailed collaboration between the DIA and police to advance assimilative law and order in Canada.

The DIA kept track of such reports, investigated incidents, and directed the policing of their wards. In April 1887, the Winnipeg *Evening Journal* reported that the Blood Indians had killed cattle, stolen horses, and fired upon a detachment of police.[65] Staff Sergeant Spicer's police report, a copy of which was forwarded to the DIA, confirmed that the NWMP were fired upon by what was described as a "large party of Indians" believed to be Bloods.[66] The NWMP notified Indian Agents and set out with a plan to arrest any Blood Indians found making their way to the

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[61] Clipping from *The Medicine Hat Times* to Indian Commissioner E Dewdney, 2 May 1887, (Regina), "Northwest Territories – Unrest Resulting in Depredations Among the Blood, Assiniboine and Gros-Ventres Indians," 1887, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3778, File: 39063, Access Code: 90.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] To Indian Commissioner E Dewdney, 5 May 1887, (Regina), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; "The Bloods Grow Bold. They Fire on a Detachment of Mounted Police – A Party Pursuing Them. [Special to the Journal.] Winnipeg, April 28," "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.
[66] PR Neale to the Commander NWMPolice Regina, 1 May 1887, (Macleod, Alberta), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; Staff Sergeant Spicer to the Officer Commanding NWMPolice Maple Creek, 30 April 1887, (Medicine Hat), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

reserve from the east.[67] It is likely that Superintendent Neale of the Macleod Division used DIA information to infer that the offending parties had come from, and returned to, the USA. The Bloods transcended the border and only twelve persons were known to have been absent from the Canadian reserve that week.[68]

Importantly for the public image and purpose of the DIA, when the Lieutenant Governor visited the Blood and Piegan Reserves, "Chiefs of both bands stated that it was their most earnest wish that their tribes should continue the friendly relations now existing between them and the whites."[69] The efforts of Chiefs to lead their people and negotiate circumstances of economic marginalization were lost in Reed's ascription to the tunnel vision of assimilation. Reed explained to the Superintendent of Indian Affairs that the Chiefs "had no complaints to make on either Reserve save the old one of a scarcity of rations; and the Agents on both Reserves state that there is more farming going on this year, than ever before."[70] Reed's celebration of the agricultural arm of Indian Affairs' assimilative program was no match for assimilation's larger purposes when the new nation's borders were disrespected in favor of much older indigenous territories and even used for what Canadian authorities saw as illegal gain.

In early May 1887, The Dog and Big Rib rode into the Blood camp singing a war song and driving horses that were identified as being stolen from Medicine Hat.[71] Superintendent Neale sent Inspector Saunders to arrest these men because he had also heard that they were responsible for firing on Sergeant Spicer and his party.[72] Nonetheless, the police captured only one horse from Medicine Hat when, on the afternoon of the arrest, One Spot returned the stolen

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[67] PR Neale to the Commander NWMPolice Regina, 1 May 1887, (Macleod, Alberta), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; Staff Sergeant Spicer to the Officer Commanding NWMPolice Maple Creek, 30 April 1887, (Medicine Hat), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

[68] Ibid.

[69] Assistant Commissioner Hayter Reed to the Superintendent of Indian Affairs, 13 May 1887, (Regina, NWT), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

[70] Ibid; PR Neale to the Commander NWMPolice Regina, 1 May 1887, "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

[71] Inconsistencies in the exact dates in May 1887 may be due to delays in sending correspondence through the postal and bureaucratic systems. In his June record of the event, Reed stated that The Dog and Big Rib rode into the Blood Camp on 2 May 1887, were arrested on 13 May, and were sentenced on 17 May. On 18 May 1887, Deputy Superintendent General Vankoughnet reported to Sir John A MacDonald that alleged ringleaders "The Dog" and "Big Rib" were arrested and taken to MacLeod on the charge. Assistant Commissioner Hayter Reed to The Superintendent General of Indian Affairs, 2 June 1887, (Regina, NWT), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; Deputy Superintendent General of Indian Affairs L Vankoughnet to Sir John Macdonald, 18 May 1887, (Ottawa); R Neale to F White, 18 May 1887, (Macleod, NWT), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

[72] Reed to Superintendent General of Indian Affairs, 2 June 1887, "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

mare that one of the men had ridden into the camp.[73] The Dog and Big Rib were sentenced by Justice McLeod to five years' imprisonment in the penitentiary.

On an eventful day, 20 May 1887, while The Dog and Big Rib were being conveyed to prison, Assistant Commissioner Reed advocated for the moral state of the accused by arguing that the alleged shooting could not have been intended to cause "real harm, but was another instance of what has not infrequently occurred before, viz, Indians firing over, or in the direction of the Police, with a view to keeping them at a sufficient distance; to prevent their discovering something which our Indians desired to conceal." Reed thought it implausible that a party of twenty Aboriginal men firing on mounted police from the range of thirty to forty yards would not hit a man or a horse, if that had been their intention. Putting aside such discrepancies in the police reports, Reed asserted that the incident was actually an indication that nothing of an "alarming nature" was occurring "as regards the feelings of the Indians, and in fact, it may be fairly inferred that, were they meditating any evil designs, they would carefully abstain from thus giving cause for suspicion, before their plans were ripe." Reed put the alleged actions into a wider context within the Canadian west where, that a degree of "lawlessness may be attributed to the Bloods and other Indians, is unquestionable, but when their numbers are considered – to say nothing of their nature – it is thought that in this respect, their conduct compares very favorably with that of white men." While being transported to prison on 20 May, the men escaped from custody at Dunmore and were thought to be heading for the South Piegans in the USA. The Agent there was alerted and promised to endeavor to return them to the Canada-US border. The policing of cross-border horse theft would continue with little rest because it was so thoroughly intertwined with greater issues of nationhood and territory.

6.1.3 Diplomacy in the Canadian North-West

When it was advantageous to do so, the DIA attempted to intercept and direct police actions. Sometimes, negotiation was the most efficacious method of achieving justice and, contrary to political portrayals of cossetted wards, powerful First Nations in the Canadian North-West were not averse to respectful diplomacy. Not long after The Dog and Big Rib's flight across the Canadian border, DIA Commissioner Dewdney met with the Commissioner of Police

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[73] The discussion on this page is based on the following source: Reed to Superintendent General of Indian Affairs, 2 June 1887, "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

regarding the alleged theft of forty-five Montana horses by the Bloods.[74] When Dewdney learned the police were planning to retrieve the horses, he made haste to the reserve.

Dewdney was concerned that police action could inflame a larger conflict in which one hundred horses were stolen from Red Crow on the Blood Reserve by members of the Gros Ventre and Crow nations traversing the US border. Police intervention to return the Montana horses could be seen as impeding attempts to ameliorate the proportionately greater loss incurred by the Bloods. Red Crow and one hundred fifty Blood Reserve inhabitants approached Dewdney to discuss the issue. They explained that they had delayed their plans to make a retaliatory journey south to explain to Dewdney that the account of horse theft in Montana was incorrect. Red Crow clarified that they pursued horses that were first stolen from him and had been able to reduce the initial loss to thirty-one horses and various colts; however, when Red Crow called at a police outpost on his return path, they assumed that Red Crow was travelling with horses that he had stolen from Montana.

In view of the circumstance that three horses had also been stolen from the NWMP and taken to the USA, Dewdney suggested that Red Crow accompany NWMP Inspector Saunders in a recovery trip to the Gros Ventres. The Bloods promised that they would stop cross-border horse procurement if the police helped Red Crow. The Bloods contended that their experience was that the police made them release the horses that they stole yet neglected to help the Bloods recover horses that were stolen from them. Red Crow proposed that he attempt a Peace Treaty with the Gros Ventres and committed that, if the Bloods' horses had been taken to the distant reservation of the Crows instead of the Gros Ventres, he would not travel to the Crow reservation. Red Crow and the Gros Ventres agreed upon peace.[75]

It is a mark of the DIA's power that Dewdney was informed of impending police action in what would otherwise be a criminal matter beyond the realm of most government departments. In the interests of preventing immediate conflict and establishing better long-term relations between the Bloods and representatives of Canadian law and order, Dewdney was in a position to accept the self-determining power of Red Crow. In turn, Red Crow found a solution that went far

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[74] Unless otherwise indicated, the discussion on this page is based on the following source: Commissioner Dewdney to the Superintendent General of Indian Affairs, 3 June 1887, (Regina), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

[75] To Comptroller of the NWMPolice White, 16 June 1887, (Ottawa), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.; Pocklington to the Indian Commissioner, 13 June 1887, (Fort Assiniboine), "Northwest Territories – Unrest Resulting in Depredations," Op. Cit.

beyond the restoration of horses to peace between indigenous nations and, if not peace, a moment of détente between First Nations and the aspiring Canadian state.

6.2 Criminal and Moral Codes: A Geography of "Indian" Criminality

"Indian" criminality is an entirely colonial construct based on limited understandings of the diversity of indigenous identities and legal epistemologies. Mark Walters distinguishes between two meanings of "Aboriginal Law": laws made about Aboriginal peoples by the state and laws made by Aboriginal peoples for themselves.[76] If law depends on a "narrative to which its subjects cannot relate, one that refuses to respect their common humanity, then it is not 'law' in any meaningful sense; subjugated peoples cannot participate in or identify with the national moral narrative that founds legal meaning."[77] Correspondingly, as Martin Luther King Junior sat in a Birmingham jail cell, he responded to criticism of his willingness to break certain laws during his non-violent campaign, writing,

> A law is unjust, for example, if the majority group compels a minority group to obey the statute but does not make it binding on itself. By the same token, a law in all probability is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law... Sometimes a law is just on its face and unjust in its application.[78]

Indigenous persons experienced the structures and application of colonial and Canadian law in particular ways.

6.2.1 Geographies of "Civilizing" Power in the Canadian West

Underscoring that land is "at the bottom of all the troubles with the Indians," Senator Macdonald sketched a geography of state law enforcement over indigenous peoples west of Ontario.[79] In the North-West, the Dominion Government believed that they had the "lands under their own control, and the police regulations as well" and could therefore "settle disputes more easily than... in other parts of the country."[80] Indigenous title to land had been recognized and the

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[76] Mark D Walters, "The Morality of Aboriginal Law," *Queen's Law Journal,* 31, (2006):470-520.
[77] Ibid:478.
[78] Martin Luther King Jr., "Letter from Birmingham Jail," *Why We Can't Wait,* Ed. Martin Luther King Jr., (New York: Harper & Row, 1963).
[79] *Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament*, (Ottawa: AS Woodburn, 1887):417-419.
[80] Ibid.

Dominion Government saw "the necessity" to extinguish it through treaty.[81] In contrast, in British Columbia, the provincial government did not recognize indigenous title "at all, not even the title of possession."[82] Within the British Columbian context, Macdonald felt that Indian Affairs was "hampered" by a duality of authority whereby the province controlled land and police regulations yet, through the *Indian Act*, the Dominion government oversaw Indian Affairs at the federal scale.[83]

Before British Columbia even became a province of Canada, William Duncan held the power of a Civil Magistrate under British colonial law, as well as the powers of an "Indian agent, teacher, missionary, trader, and justice of the peace" in Metlakahtla.[84] Duncan organized a "well disciplined and effective" police force of indigenous persons.[85] The police force worked in concert with the Metlakahtla mission lock-up.[86] By 1886, Metlakahtla, British Columbia, had become a tax-paying "civilized Indian village" of approximately one thousand inhabitants with an estimated export value of between forty and sixty thousand dollars of salmon.[87]

While the "Indians had grievances respecting their land and reserves" they afforded correct deputations to the appropriate authorities.[88] Metlakahtla refused to allow a survey before they received a response regarding their petitions.[89] Commissioner Powell depicted a dire situation in which the Metlakahtla Council had seized the church and school house, removed the store to a different location, "taken possession of the gaol or provincial lock-up – holding the keys" and was not hesitating to impose fines and imprisonment on those who did not agree with their plan to boycott state legal and economic systems.[90]

Senator Macdonald, however, later defended Duncan by clarifying that the store already belonged to the "Indians" and they had always had keys to the lock-up since Duncan's force of

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[81] *Debates of the Senate*, 1887, Op. Cit.:417-419.
[82] In 1969, Frank Calder, president of the Nisga'a Tribal Council, rejected a British Columbia ruling that Nisga'a title to unceded land had been extinguished simply by the enactment of British colonial law. The Calder Case resulted in the landmark 1973 Supreme Court of Canada ruling affirming Aboriginal title under the *Proclamation of 1763*. Dickason, 2002, Op. Cit.:332; *Debates of the Senate,* 1887, Op. Cit.:417-419.
[83] *Debates of the Senate,* 1887, Op. Cit.:417-419.
[84] "Mr Duncan's Mission at Metlacatlah,"*Annual Report of the Commissioner of Indian Affairs*, United States Office of Indian Affairs, (Washington: Government Printing Office, 1870):558-559.
[85] Ibid.
[86] Ibid.
[87] *Debates of the Senate,* 1887, Op. Cit.:417-419.
[88] Ibid.
[89] Ibid.
[90] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1886*, (Ottawa: Maclean, Roger & Co., 1887):98.

fifty Indian Constables had "maintained law and order in that northern country for twenty-five years."[91] Importantly, imprisonments had not taken place "under Indian rules by the Indians."[92] To Indian Commissioner Powell, it seemed that Duncan, once respected, had now changed and was misleading the village of Metlakahtla to believe that they were acting according to a direct legal relationship with the British Crown.[93] Powell believed that they would not acknowledge Canadian law or Canadian officials.[94]

A gunship was ordered to address the situation.[95] Duncan attempted to intervene with the provincial Premier before the vessel departed by assuring him that, if the Indian Commissioner would join him in speaking with the village, the situation could be quietly resolved and a warship would not be required; however, the Premier ordered that it proceed.[96] In consequence, the *HMS Cormorant* journeyed up the coast with a stipendiary magistrate, the Victoria Chief of Police, and a "posse of constables."[97] Of the eight "ringleaders" who were arrested without resistance, some were tried, convicted, and sentenced to imprisonment while others were committed for trial in a higher court.[98] The survey was completed before the *Cormorant* left Metlakahtla.[99]

6.3 Legal Structures in Upper Canada

As colonial expansion placed indigenous geographies in Eurocentric maps, it claimed that the people and places within were brought into the legal realm of the empire. Nonetheless, as it was applied in the Canadian colonies, British common law was tailored to suit settler interests and it is "simply unreasonable to assume that the common law rules could be blindly extended and applied to the determination of the territorial rights of indigenous nations without any regard for the obvious differences" between indigenous and settler experiences.[100]

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[91] *Debates of the Senate,* 1887, Op. Cit.:423.
[92] Ibid.
[93] *Annual Report of DIA*, 1886, Op. Cit.:98; *Debates of the Senate,* 1887, Op. Cit.:420-422.
[94] *Debates of the Senate,* 1887, Op. Cit.:420-422.
[95] Ibid.
[96] Ibid.
[97] *Annual Report of DIA*, 1886, Op. Cit.:xi.
[98] Ibid.
[99] Ibid.
[100] Mark D Walters, "Aboriginal Rights, *Magna Carta* and Exclusive Rights to Fisheries in the Waters of Upper Canada," *Queen's Law Journal*, 23, (1998):330.

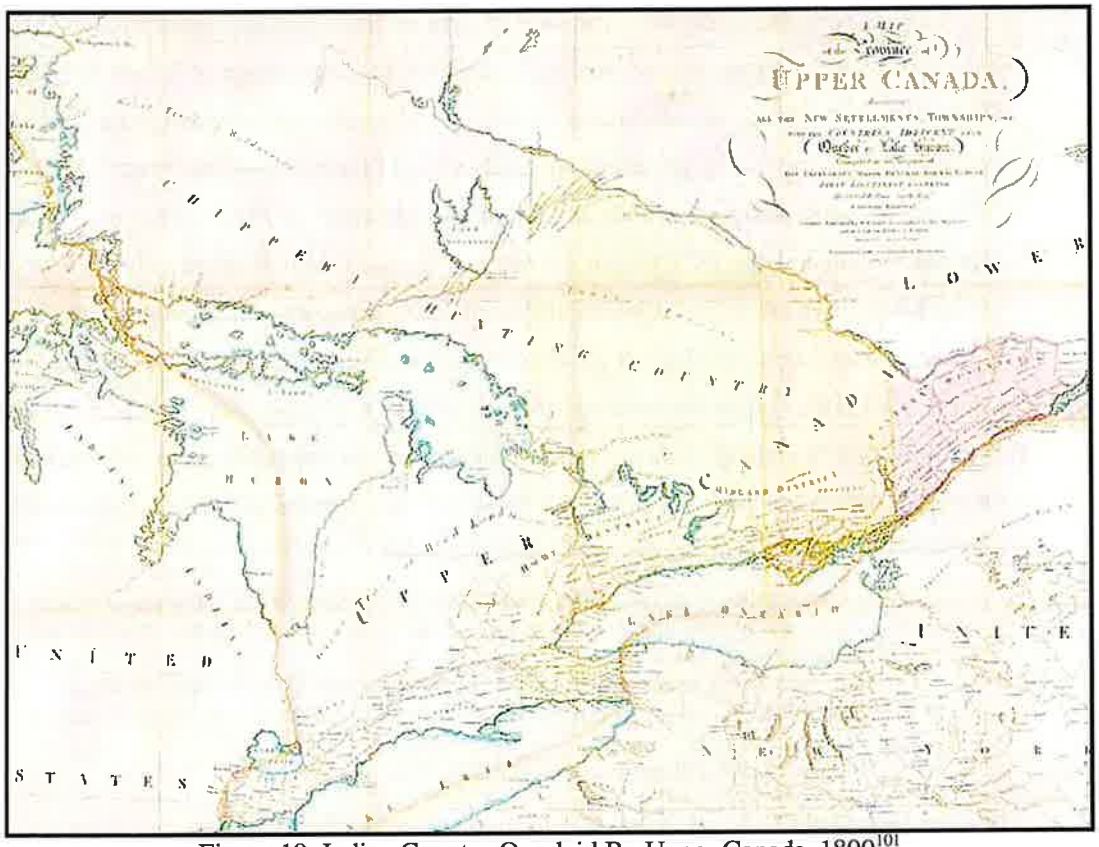

Figure 19: Indian Country Overlaid By Upper Canada, 1800[101]

In Upper Canada, Courts of Quarter Sessions were apportioned into four main districts, Eastern, Midland, Home, and Western, which remained functional divisions until the 1830s and 1840s.[102] In the application of justice, accommodations had to be made because much of Upper Canada was still a western frontier.[103] In locations where lands had not been ceded, "manifestations of British authority were minimal."[104] Furthermore, Walters makes the important point that Upper Canada did not create a statute "expressly to include reserves" in colonial court systems.[105]

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[101] Adapted from "A Map of the Province of Upper Canada describing all the new settlements, townships, &c with the countries adjacent from Quebec to Lake Huron [cartographic material]," 12 April 1800, National Archives of Canada, Alexander E MacDonald Canadiana Collection #444, Microfiche NMC98186, R11981-104-7-E, Box 2000931253 Item no. assigned by LAC 444, Other accession no. 80101/245 CA, Local Class No. H2/400/1800 (copy1), Access Code: 90, Copyright: Expired.
[102] Walters, 1998, Op. Cit.:284-285.
[103] Ibid:285.
[104] Ibid.
[105] Ibid:288.

Since criminal codes are a measure of what societies consider unacceptable, crime and immorality are closely associated. As legal guardians, the Department of Indian Affairs deployed forces of law to enforce assimilationist values. Indian Agents were empowered as Justices of the Peace and given the task of governing the "behaviour of their Aboriginal wards" using Title IV, "Offences Against Religion, Morals and Public Convenience" of the 1892 *Criminal Code of Canada*.[106] Although the 1876 *Indian Act* inserted "Indians" into an apparently discrete category of wardship, when crime, punishment, and assimilative goals were under consideration, a wider view was taken. Elements of many government and ecclesiastical laws could be called upon to achieve state goals. Under the heading "Inciting Indians to Riotous Acts," chapter 43, section 111, of the 1892 *Criminal Code of Canada* reached beyond strict definitions of status outlined in the *Indian Act*. Instead, this section of the *Criminal Code* appears to consider the unrest in the north-western Great Lakes frontier as it set into law that

> Every one is guilty of an indictable offence and liable to two years' imprisonment who induces, incites or stirs up any three or more Indians, non- treaty Indians, or half-breeds, apparently acting in concert-
> (a) To make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of the peace; or
> (b) To do any act calculated to cause a breach of the peace.[107]

Whether enfranchised or not, individuals of indigenous and Métis ancestry were legally distinguished as being at proportionately greater risk of "being led astray" and disturbing the good order of Canada.

The 1892 *Criminal Code* reveals a great preoccupation with the potential criminal morality of "Indian" women. Convictions for offences considered as the "Prostitution of Indian Women" could result in fines between ten and one hundred dollars or six months' imprisonment.[108] In this case, "Unenfranchised Indian" women are specified. The "keeper of any house, tent or wigwam," as well as any person who "appears, acts or behaves as master or mistress, or as the person who has the care or management" who allows an "unenfranchised Indian woman to be or remain in such house, tent or wig-wam, knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein" is criminalized alongside the woman.[109] The language of

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[106] *Criminal Code of Canada*, Title IV, "Offences Against Religion, Morals and Public Convenience," 1892, Amended 1893.
[107] Ibid:c. 43, s. 111.
[108] Ibid.
[109] Ibid:c. 43, ss. 106 and 107, c. 33, s. 11.

this part of the *Criminal Code* echoes the *Indian Act* and inculcates a geography of criminality both on and off reserves. Despite their status as legal minors, "Indian" women could be convicted, and sentenced, for being "found in" a place associated with criminal immorality.

6.3.1 Assimilation, Law, and Moral Convenience

Canadian governments could not publically countenance self-determined indigenous legal systems because First Nations systems of order undermined state justifications of rational control applied over wild Canadian landscapes and "Indians." While displaying a degree of unease, the Department of Indian Affairs occasionally demonstrated a partial recognition of First Nations laws and customs. Not to belie larger societal beliefs about lawless "Indians," this was often an acquiescence of convenience related to only those elements of indigenous laws that appeared to coincide with idealized membership in the Canadian Dominion. Nevertheless, these bureaucratic inconsistencies tangled the colonial system employed to encourage the supposedly inevitable march to assimilation because they tacitly acknowledged indigenous customary laws.

Superintendent General of Indian Affairs Clifford Sifton acknowledged this difficulty in his department's 1904 *Annual Report.* In order to promote the marital ideal, marriages made according to "tribal customs" were recognized by Dominion law, nevertheless, the dissolution of marriage by indigenous custom was prohibited even though divorce was a legal recourse for marriages made under Canadian law.[110] While reflecting his department's preoccupation with morality, Sifton nonetheless recognized the double-standard that cohabiting men and women previously married to other persons should be "condemned as illegal and immoral" when their communities saw the unions as the "quite correct" outcome of divorce and remarriage.[111] Although Sifton observed a "considerable looseness exists in the relations between the sexes," he argued that "on the whole the morality of the Indians, up to their light, is as good as that of their

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[110] In response to a question regarding the validity of a second "Indian marriage" after a previous Indian marriage was dissolved according to indigenous practice, it was also the Department of Justice's opinion that "marriages if valid cannot be dissolved according to the Indian customs, but only in such manner as may other valid marriages." Therefore, in such cases, a subsequent marriage would not be recognized by the Government and the indigenous wards of the state would be considered to be engaged in immoral relationships. Indian "custom" could be transformed into Canadian legality; however, once legally sanctioned by the state, indigenous persons would not be permitted to maintain, or return to, indigenous legal practices. Deputy Minister of Justice EL Newcombe to the Deputy Superintendent General of Indian Affairs, 7 November 1904, (Ottawa), "Dept. of Justice Opinions – Vol. 3," 1900-1910, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904,* (Ottawa: SE Dawson, 1905):xxix.

[111] Ibid:xxix.

neighbours."[112] Sifton believed that the lack of adherence to systems of Canadian legal marriage in preference for indigenous systems occurred because indigenous peoples could not "appreciate such distinctions."[113] Rational preference for enduring indigenous ways of life was unthinkable to Sifton.

Although it was thought that there was "even among the most advanced a regrettable amount of laxity" in "tribal" marriage customs, Deputy Superintendent General Frank Pedley assessed that, by 1910, Indian Affairs had succeeded in making "overt acts of conjugal infidelity," once accepted without criticism, the subject of negative peer attention.[114] Responding to news reports that "Indian" girls were being sold into slavery, Pedley identified these "sales" as part of an indigenous marriage process, remarked that such transactions were uncommon, and insisted that the "principle of the financial aspect does not seem to widely differ from that which not uncommonly governs the arrangement of marriages in advanced civilization, and the Indian girls apparently acquiesce as cheerfully as do their white sisters under analogous circumstances."[115] The main public objection dwelt upon the potential that they could, as contractual obligations, be terminated upon fulfillment or mutual consent, so that, in terms of Canadian law, subsequent contracts might mean that the crime of bigamy had been committed.[116] Pedley thought that enacting a law against these contracts could make matters worse by alienating many women who considered themselves wives, categorizing children as illegitimate, and complicating property descent.[117]

As Reverend John Semmens of Lake of the Woods witnessed in 1915, it was "pretty generally supposed that the Indian is not richly gifted with the grace of moral purity"; however, "admitting that some reason may be found for this conclusion... imagination has helped to make matters worse in report than they are in fact."[118] Rather than indulging in a "general condemnation of native frailty" Semmens desired that it be recognized that he found "hundreds of them who lead clean lives, keep their marriage vows in all good conscience, and conduct

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[112] *Annual Report of the DIA*, 1904, Op. Cit.:xxix.
[113] Ibid:xxix.
[114] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):xxix.
[115] Ibid:xxix-xxx.
[116] Ibid:xxx.
[117] Ibid.
[118] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916):19-20.

themselves commendably."[119] Obliquely acknowledging Aboriginal systems of law and resistance to imposing Canadian law, Pedley acknowledged

> the fact that as a rule these Indians among whom tribal marriage customs prevail attach much greater sanctity to them than to any other religious or civil ceremony which might be imposed upon them, and any attempt to exert force in this direction might readily result in introducing the practice of cohabitation without any pretense at contract or ceremony at all.[120]

In any case, reasoned Pedley, the inevitable spread of settlement would make the entire issue irrelevant.[121]

6.3.2 Morality and Legal Rights: An Appeal from Sucker Creek, Manitoulin Island

In 1896, a young woman from Manitoulin Island's Sucker Creek band, now known as Aundeck Omni Kaning, sent a written plea to the Department of Indian Affairs asking for the annulment of her marriage to a man from the Sheguiandah reserve.[122] Nine years previously, as an orphan of only thirteen years-old, the young woman was compelled by her sister to marry the man. The young woman "never loved him" and her groom had not even asked her to be his wife. In her own words, the young woman

> Never had a desire to be married at that time. Though the Clergyman who performed the ceremony plainly saw that I was averse to be married. When I was told to step forward in the Church I never made a motion. But by both the Pastor & Relatives I was persuaded to go up to the front of the Church & the knot was "tied."

The young woman was aware of the legal requirements of Christian marriage and declared, "I am not afraid to take an oath that my marriage never went any further than that… there was never a proper relation (or connection) took place between the man & myself." Despite advice, and thinking "the matter over many a time," she found it "impossible" to even attempt to live with her husband.

The Department of Indian Affairs forwarded the issue to the Deputy Minister of Justice for an opinion. It was determined that the High Court of Justice had jurisdiction over the matter and that, in a case such as this, the marriage could be declared "null and void" according to legislation or by a private act of Parliament.

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[119] *Annual Report of the DIA*, 1915, Op. Cit.:19-20.
[120] *Annual Report of the DIA*, 1910, Op. Cit.:xxx.
[121] Ibid.
[122] In this section, names have been withheld and partial reference information is given. "Manitowaning Agency – Request of…of the Sucker Creek Band to Have Her Marriage to… of Sheguianda Annulled." 1896-1897, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2848, File: 175,262, Access Code: 90.

The DIA requested statements from the clergyman and from other persons who might support the claims of the young woman's letter. A statement from a Chief explained that the woman now lived with another man and had a child with him. A woman from the band supported the request for annulment. She was a witness to the marriage ceremony in which the "young Bride sat on the farthest back seat & when told to go up to the front would not obey, but her sister persuaded her at last to go up." Although it had been planned that the newlywed couple would begin their life together in this woman's home, fear led the bride to share sleeping quarters with the woman's daughter and to play with her during the day. The two girls were approximately the same age. The daughter confirmed that these were the sleeping arrangements. Another band member stated that the bride "told my wife that she never had closer relations with her husband than the form of marriage ceremony" and that the groom told the same story. Moreover, the groom was willing to have the marriage annulled. Several Sucker Creek band members confirmed that the woman did not live with her husband, nor was she financially supported by him.

The clergyman who conducted the marriage ceremony professed it "contrary to the canons" of the Church of England to "countenance divorce under any circumstances." In fact, canon law supports adultery as a validation for divorce. The clergyman maintained that the girl was actually sixteen when she was married and that it was "untrue to say that she was coerced or that she did not understand the nature of the obligation because [he] took the trouble to explain it to her at the time of her marriage." The minister implied that the girl's reason for not living with her husband, that she did not like him, was not sufficient and had no bearing on her claim that she did not wish to be married to him. He also noted her relationship and child with another man and portrayed the annulment as a scheme to "hide" adultery. The clergyman's only sympathy was for the husband who was "hampered with such a slut" yet the husband was also deemed beyond help from church-sanctioned divorce because he was also living with another person.

Aside from the abundance of evidence, in both Canadian and canonical law, to support annulment or divorce, in the end, it was the assimilationist values of the Indian Department that drove their decision on the matter. The Deputy Superintendent General of Indian Affairs cited the woman's "improper life" as the reason that the request for a divorce or annulment would not be supported. For those classed as "Indians," law enforcement could be more a matter of assimilationist departmental morality than legal right.

6.4 Peroratio: Criminal Assimilation

As an aggregated and unenfranchised class within the machinery of the colonizing state, all "Indians" could be unduly subjected to the manipulations of both legislative and criminal law. Within the social, legal, and geographical frameworks of the colonizing state, the only way that indigenous peoples could enter into a full condition of lawful adult existence was by divesting themselves of their identities. As this chapter has shown through a legal historical geographical retelling of nationalistic tales on Canada's North-West frontier, since indigenous principles of law were devalued and criminalized, peoples who maintained their indigenous identities within territories claimed by the colonizing state were considered inherently less than lawful. Similar to prisoners, state legislative and criminal law required that indigenous identities be "reformed" or, rather, discarded in order that they be assimilated into the state. Canada's North-West frontier has loomed longer in the national imagination than more recent celebratory reclamations of its history. For colonial officials with an eye to asserting state law over "Indian" peoples moving over vast swaths of land that Canada desired to have for its own purposes, the North-West was indeed a wild frontier that had to be policed and conquered. From the centralized administration of colonial governance, the criminalization of indigenous peoples in the North-West influenced "Indian" policy and legislation across Canada.

Chapter 7

Intoxicating Geographies: Liquor, Identity, and Place

The association between indigenous persons and alcohol abuse is a persistent negative stereotype and an enduring governmental preoccupation. While the precise boundaries of this prejudice are controversial, it is evident that it emerged from colonial ideals and expediencies. The stereotype of the "Drunken Indian" is more often seen as a problem to be addressed rather than an idea to be critically assessed. In this chapter, the "Drunken Indian" will be reconsidered.

7.1 Stereotypes of the "Drunken Indian"

Attempts to bring about equality for Aboriginal peoples within the Canadian state do not escape the mire of external and internal racialization. While cultural and racial stereotypes can be dissected as social constructions, they sharply affect the everyday lives of those who capitalize on privilege as well as those who bear phenotypical witness to systematized prejudice. Alcoholism is seen as a legacy of despair visited upon Aboriginal persons by horrific colonial pasts and seemingly impenetrable futures on economically-depressed reserves or in the supposedly confounding urban environments of Canada where individuals are cast as out-of-place and under-qualified by virtue of select visible indicators of indigenous ancestry.[1]

Even as the National Aboriginal Health Organization was given a shut-down date of 30 June 2012, Canadian news media pronounced, the "abysmal health of native people is Canada's greatest shame."[2] Warnings that alcohol and substance abuse "are rampant" share column space with the information that approximately "17,000 aboriginals are currently behinds bars, making up 20 per cent of this country's prison population" yet media sources claim that, to Canadians, "[n]one of this is news."[3] While the population count "skyrockets," reputable accounts are buttressed by government statistics as they grieve a range of inequities from the "Third World conditions on some reserves to the plights of many urban aboriginals," who now comprise the

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[1] Bill Johnston, "First Nation Youth," *The Globe and Mail*, Toronto, (16 March 2012):A14.
[2] André Picard, "Tories 'want out of the aboriginal business,'" *The Globe and Mail*, Toronto, (10 April 2012):L5.
[3] "The Aboriginal Stats," *The Globe and Mail*, Toronto, (16 January 2008):A18.

majority of self-identified Aboriginal persons.[4] It is this particular population geography that inspires a sense of urgency and unsettles complacent perpetuators of the colonial myth that all Aboriginal peoples in Canada are confined to remote reserves.[5] Paternalistic mourning over purportedly atavistic indigenous peoples is lent new credence by inequalities observed through geographic proximity. Uncomfortable relationships between Aboriginal peoples and the Canadian state are thus made relevant to those whose main concern is that the threat of the "uncivilized" is reaching their conventional doorsteps.

From a Western medical perspective, even though, compared to the general population, a "small percentage of Indigenous people in Canada consume alcohol, the rate of disordered drinking is substantially higher" amongst indigenous persons.[6] Nevertheless, examining the 2001 Aboriginal Peoples Survey and the 2000-2001 Canadian Community Health Survey Cycle 1.1, Kathi Wilson and Nicolette Cardwell find similar rates of regular alcohol consumption amongst Aboriginal and non-Aboriginal persons in urban settings.[7] Indigenous persons in North America are characterized as having a low-frequency/high-quantity "typical drinking style": although indigenous persons are less likely to consume alcohol, when alcohol is consumed, it is in relatively higher amounts with resultant accidents, violence, morbidity, and mortality.[8]

Alcohol use and alcohol abuse are conflated and racially attributed to persons of indigenous ancestry and identity. Annette Browne explains that when

> health-care providers have frequent contact with patients who embody social problems (e.g., alcoholic patients), and when these patients are associated with a particular ethnocultural group, it can be challenging not to assume that social problems are culturally based. Because of the relatively narrow conceptualization of culture, the tendency in culturalist discourse is to overlook the broader structural, economic, and historical contexts that shape social and health problems.[9]

For indigenous peoples, the very ideas of "social," "health," or "problem" may be conceived quite differently than the norms accepted by Canadian, provincial, or territorial healthcare providers. From this ontological difference, philosophies of how to approach alcohol-related

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[4] "The Aboriginal Stats," 2008, Op. Cit.:A18.
[5] Ibid.
[6] Malcolm King, Alexandra Smith, and Michael Gracey, "Indigenous Health Part 2: The Underlying Causes of the Health Gap," *The Lancet*, 374(July), (2009):78; Robert S Young and Jennie R Joe, "Some Thoughts About the Epidemiology of Alcohol and Drug Use Among American Indian/Alaska Native Populations," *Journal of Ethnicity in Substance Abuse*, 8, (2009):223-241.
[7] Kathi Wilson and Nicolette Cardwell, "Urban Aboriginal Health: Examining Inequalities between Aboriginal and Non-Aboriginal Populations in Canada," *The Canadian Geographer*, 1, (2012):105.
[8] Darryl S Wood, "Alcohol Controls and Violence in Nunavut: A Comparison of Wet and Dry Communities." *International Journal of Circumpolar Health*, 70(1), (2011):20.
[9] Annette J Browne, "Discourses Influencing Nurses' Perceptions of First Nations Patients," *CJNR*, 41(1), (2009):179.

phenomena may become even more divergent from standardized healthcare protocols and vary between diverse indigenous peoples within Canada.[10]

Nonetheless, in a study designed to explore Aboriginal experiences of public health research in Garden River, Little Current, M'Chigeeng, Wikwemikong, and London, Ontario, Maar et. al. assess that while Western scientific paradigms are "criticized for their embodiment of colonial power imbalances, public health research remains critically relevant due to the significant health disparities experienced by Aboriginal people."[11] "Non-communicable" diseases and injuries such as alcohol and substance abuse, cancer, cardiovascular disease, diabetes, family violence, fire injuries, motor vehicle accidents, death by suicide, and death by accidental drowning have eclipsed infectious diseases as the predominant causes of morbidity and mortality of Aboriginal persons.[12]

Amy Salmon found that, as of 2011, there was "no population-level data available showing the extent to which Aboriginal women in Canada drink during pregnancy, or exhibit patterns of alcohol use that are (or are not) distinct from those of other Canadian women."[13] Colonial legacies have been compounded by "ethnocentric and patriarchal constructs which position Aboriginal mothers as abusive, neglectful and otherwise dangerous to their children."[14] Since colonialism is implicated in both alcohol abuse and stereotypes of indigenous peoples, campaigns against Fetal Alcohol Spectrum Disorder (FASD) are tailored to Aboriginal contexts.[15] Linking anti-FASD campaigns to decolonization is a "strategy for accessing much needed state resources," however,

> hegemonic understandings of what causes FASD and why it needs to be prevented remain intact: the targets for FASD prevention messages are pregnant women who drink (not the State policies that perpetuate colonial conditions and health disparities), and 'FASD births' (i.e. Aboriginal children whose mothers drank during their gestation) need to be prevented because they represent extraordinary costs to communities and State institutions.[16]

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[10] Christine Smillie-Adjarkwa, "Aboriginal Alcohol Addiction in Ontario Canada: A Look at the History and Current Healing Methods That Are Working in Breaking the Cycle of Abuse," *Indigenous Policy Journal*, XX(3, Fall), (2009):1-9.
[11] MA Maar et. al., "Thinking Outside the Box: Aboriginal People's Suggestions for Conducting Health Studies with Aboriginal Communities," *Public Health*, 125, (2011):748.
[12] Ibid:747-53.
[13] Amy Salmon, "Aboriginal mothering, FASD Prevention and the Contestations of Neoliberal Citizenship," *Critical Public Health*, 21(2, June), (2011):166.
[14] Ibid:169.
[15] Ibid:171.
[16] Ibid.

In consequence, indigenous women are seen to fail "tests of citizenship" by bearing children who are devalued as "'burdens' and 'drains'" on social welfare systems.[17] FASD is also associated with costs to the state in enforcing criminal law.[18]

Aboriginal communities in Canada have developed local approaches to intoxicants. The Wikwemikong Unceded Reserve adopted an Alcohol Management Policy in 1993.[19] Self-determination of alcohol is a factor in the decolonization efforts of many Aboriginal communities who assert that alcohol use did not take place in First Nations, Métis, or Inuit "societies prior to European contact, and that the introduction of alcohol was intimately tied to conditions of colonisation."[20] Some communities choose to become "dry" while others draft, institute, and enforce alcohol control policies that regulate commercial sales of alcohol as well as document and restrict individuals with histories of alcohol abuse.[21]

Colleen Davison, Catherine Ford, Paul Peters, and Penelope Hawe conducted the first large-scale compilation and examination of alcohol control policies in the Canadian north.[22] Their study of seventy-eight communities in the NWT, Yukon, and Nunavut between 1970 and 2008 traced the movement toward local governance from the first provisions in provincial and territorial *Liquor Control Acts* to allow the adoption of local control of liquor through plebiscite.[23] While the first community restriction did not occur in the Yukon until 1991 and most communities continue to remain open in both the Yukon and the NWT, by 2006, only four communities in Nunavut did not have special restrictions on the importation of alcoholic beverages.[24] Locally-regulated communities tend to be more geographically isolated, smaller, and younger and have significantly higher populations of persons who self-identify First Nations, Métis, or Inuit origins.[25] Almost all communities with total prohibition do not have permanent road access.[26] Darryl Wood notes that "dry" communities in Nunavut record less violent crime than communities with alcohol importation; however, dry communities remain "relatively violent places" where the crimes of simple, serious, and sexual assault occur at more than double the

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[17] Salmon, 2011, Op. Cit.:173.
[18] Ibid.
[19] Louis Gliksman et. al., "Aboriginal Community Alcohol Harm Reduction Policy (ACAHRP) Project: A Vision for the Future," *Substance Use & Misuse*, 42, (2007):1851-1866.
[20] Salmon, 2011, Op. Cit.:170.
[21] Ibid: 170.
[22] Colleen Davison, et. al., "Community-driven Alcohol Policy in Canada's Northern Territories 1970-2008," *Health Policy*, 102, (2011):34-40.
[23] Ibid:35.
[24] Ibid:36.
[25] Ibid:36, 38; Salmon, 2011, Op. Cit.:170.
[26] Davison, 2011, Op. Cit.:38.

national rate.[27] Despite the benefits of alcohol restriction and self-governance, simplistic nationalistic visions of harmonious life in the remote dry communities of the Canadian north are illusory.

7.2 Intoxicants in the *Indian Act* and the Historical "Drunken Indian"

In addition to Canadian prejudices, stereotypes of the "Drunken Indian" are prevalent in other countries founded from European colonial and missionary origins.[28] While most research on alcohol and indigenous persons in Canada is undertaken in a contemporary medical vein, this literature puts forward the argument that the history of alcohol abuse in the "north, and among indigenous peoples in general, is inextricably linked to colonialism, historic injustices and the paternalistic relationships that have been in place between the state and indigenous groups."[29] There is a great deal more to learn about both contemporary and historical associations between alcohol, colonialism, and indigenous persons in Canada.

Stipendiary Magistrate Francis O'Brien of Chicoutimi reified the idea of the "Drunken Indian" as he traced the origins of the "most potent cause of demoralization and... of extinction of the divers Indian races on this part of the North American Continent" to the "cursed traffic in rum... encouraged by the French authorities."[30] Monseigneur Laval "displayed the greatest energy possible against the poison-sellers" and made a successful journey to France in 1678 with

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[27] Wood, 2011, Op. Cit.:25-26.

[28] In their examination of potential juror bias towards Native American defendants, Struckman-Johnson et. Al. found "suggestive evidence for a stereotypical drunken-Indian bias in mock juror judgments." Cindy Struckman-Johnson, Michael G Miller, and David Struckman-Johnson, "Effects of Native American Race, Intoxication, and Crime Severity on Judgments of Guilt," *Journal of Applied Social Psychology*, 38(8), (2008):1990; Marilyn Brown, "Aina Under the Influence: The Criminalization of Alcohol in 19th-Century Hawai'i," *Hülili: Multidisciplinary Research on Hawaiian Well-Being*, 7, (2011):311-339; Mandy Wilson, et. al., "The harmful use of alcohol amongst Indigenous Australians," *Australian Indigenous HealthInfoNet*, 4(May), (2010):1-20; Chris Cunneen, "Indigenous Incarceration: The Violence of Colonial Law and Justice," *The Violence of Incarceration*, Eds P Scraton, and J McCulloch, (London: Routledge Taylor and Francis Group, 2009): 209-224; Erin Ebbett and Dave Clarke, "Maori Identification, Alcohol Behaviour and Mental Health: A Review," *International Journal of Mental Health and Addiction*, 8(2, April), (2010):214-231; Christine Hamelin, et. al., "Childhood sexual abuse and adult binge drinking among Kanak women in New Caledonia," *Social Science & Medicine*, 68, (2009):1247-1253; Peter Mancall, Paul Robertson, and Terry Huriwai, "Maori and alcohol: a reconsidered history," *Australian and New Zealand Journal of Psychiatry*, 34(1, February), (2000):129-134; Nicole Yuan, et. al., "Alcohol is Something That Been With Us Like a Common Cold': Community Perceptions of American Indian Drinking," *Substance Use & Misuse*, 45(12), (2010):1909-1929.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916):11.

[29] Davison, 2011, Op. Cit.:39.

[30] Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1879*, (Ottawa: Maclean, Roger & Co., 1880):39-40.

a view to obtaining a royal decree "interdicting the sale of intoxicating liquors by the French to the Indians" from Louis XIV so that Governor Frontenac would be forced to halt the liquor trade.[31]

Robert Campbell finds that "European stereotypes about Native drinking revealed European concerns about excessive drinking in general and the place of Aboriginal peoples in society in particular."[32] Although the "widespread problem of alcohol abuse" impinged on "settlers and Aboriginal peoples alike," the sale of liquor to "Indians" was made illegal as part of the assimilation program.[33] For the paternalistic Department of Indian Affairs, intoxicants represented the antithesis of all that they were attempting to accomplish amongst their "Indian" wards.

For many, heightened perceptions of the dangers of alcohol consumption by "Indians" stemmed from beliefs in their constitutional weakness as well as the danger that "savage" tendencies might be loosed from the constrains of "civilization" by disinhibiting liquor. In 1881, Drapeau, Priest and Indian Agent of Restigouche, demonstrated the physical, religious, cultural, and legal confluence involved in this racialization of "Indian" wards. Drapeau believed that the "most prevalent disease" on the reserve, tuberculosis, "no doubt, originates from the abuse of alcoholic liquors, and this use increases the disease more and more."[34] The belief that Indians were both vulnerable and dangerous was more than a societal prejudice. Wardship and prohibition from liquor were the Canadian state's official policy legislated in the *Indian Act*.

The DIA hoped that an anti-tuberculosis pilot project launched in Ontario could be used to secure a larger parliamentary appropriation to expand the program across Canada.[35] The two-pronged pilot project centred on a medical survey to identify "incipient cases" to be confined to sanitoria and an effort to "introduce more sanitary conditions in the dwellings of the Indians."[36] The DIA authorized that a circular, "designed to easily arouse the attention of the more primitive type of Indian mind," in both English and Cree syllabics, be posted in prominent places on reserves. Although titled "Instructions Which if Followed Will Prevent Indians Contracting

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[31] Annual *Report of the DIA*, 1879, Op. Cit.:39-40.
[32] Robert A Campbell, "Making Sober Citizens: The Legacy of Indigenous Alcohol Regulations in Canada, 1777-1985," *Journal of Canadian Studies*, 42(1, Winter), (2008):106; Mariana Valverde, "A Postcolonial Women's Law? Domestic Violence and the Ontario Liquor Board's 'Indian List,' 1950-1990," *Feminist Studies*, 30(3, Fall), (2004):569.
[33] Campbell, 2008, Op. Cit.:107.
[34] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1881*, (Ottawa: Maclean, Roger & Co., 1882):16-17.
[35] *Annual Report of the DIA*, 1915, Op. Cit.:xxiii-xxiv.
[36] Ibid.

Tuberculosis," this pamphlet clearly indicated other DIA "health" messages such as an admonition to refrain from drinking whisky because "[w]hisky and allied drinks are the world's national curse."[37]

Figure 20: "Drunken Indians Among the Stumps of London," Canada West, 1843[38]

From early admonitory legislation, Upper Canada passed a permanent ban on liquor sales to "Indians" in 1840.[39] Enduring colonial concerns that liquor would have intense and dangerous effects on "Indians" were legislated into the first consolidated *Indian Act* in 1876.[40] The legal geography of the 1876 *Indian Act* targeted the contaminating influences of liquor in sites of assimilative quarantine. After an initial definition principally referring to alcoholic beverages, the first occurrence of "intoxicants" in the 1876 *Indian Act* is in reference to the governance of land surrender and resource extraction. Section 27 made it illegal to "introduce at any council or meeting of Indians held for the purpose of discussing or of assenting to a release of surrender of a reserve or portion thereof, or of assenting to the issuing of a timber or other license, any

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[37] *Annual Report of the DIA*, 1915, Op. Cit.:xxiii-xxiv.
[38] Adapted from "Drunken Indians among the stumps of London, C.W.," Sir James Edward Alexander Sketchbook, 1843, National Archives of Canada, Acc. No. 1977-22-78, Copyright: Expired.
[39] Campbell, 2008, Op. Cit.:108; *An Act to Amend and Make Permanent an Act Passed in the Fifth Year of His Late Majesty's Reign, entitled, "An Act to prevent the Sale of Spirituous Liquors to Indians,"* 1840, 3 Victoria, c. 8, s. 1.
[40] *An Act to Amend and Consolidate the Laws Respecting Indians*, SC 1876, c. 18.

intoxicant."[41] Of particular interest in developing legal procedures to legitimize the procurement of Indian lands, Section 27 punished any person who introduced intoxicants at these meetings, as well as any "agent or officer" of the Superintendent-General or Governor in Council "introducing, allowing or countenancing by his presence the use of such intoxicant among such Indians a week before, at, or a week after, any such council or meeting."[42] Superior courts were instructed to impose a fine of two hundred dollars and pay half of that fine to the informer involved in bringing the charge.[43]

Discussions of the importance of Indian "status" tend to overlook the broader assimilative scope of Canadian Indian legislation and disregard the degree to which Indian Affairs felt entitled to conduct surveillance. The 1876 *Indian Act* also dealt with the "non-Treaty Indian." Section 4 defined the "non-Treaty Indian" as "any person of Indian blood who is reputed to belong to an irregular band or who follows the Indian mode of life, even though such person be only a temporary resident in Canada."[44] As such, persons subjectively thought to bear the phenotypical and cultural markers of "Indian" identity were subject to the extensive regulation of the state. Moreover, the Canada-USA border was degraded by the stereotypical application of intensive regulation by the Canadian state, despite status, citizenship, or home. Despite its racialized discrimination, in some ways, Section 4 conceded the existence of indigenous persons who did not live according to European epistemological norms and boundaries.

The supply or sale of intoxicants to "any Indian, or non-treaty Indian in Canada" the use of any building on a reserve to supply intoxicants, and the possession of "any intoxicant in the house, tent, wigwam or place of abode" was barred by Section 79 of the *Indian Act* with instructions that convictions

> before any judge, stipendiary magistrate or two justices of the peace, upon the evidence of one credible witness other than the informer or prosecutor, be liable to imprisonment for a period not less than one month nor exceeding six months, with or without hard labor, and be fined not less than fifty nor more than three hundred dollars, with costs of prosecution, – one moiety of the fine to go to the informer or prosecutor, and the other moiety to Her Majesty, to form part of the fund for the benefit of that body of Indian or non-treaty Indians, with respect to one or more members of which the offence was committed.[45]

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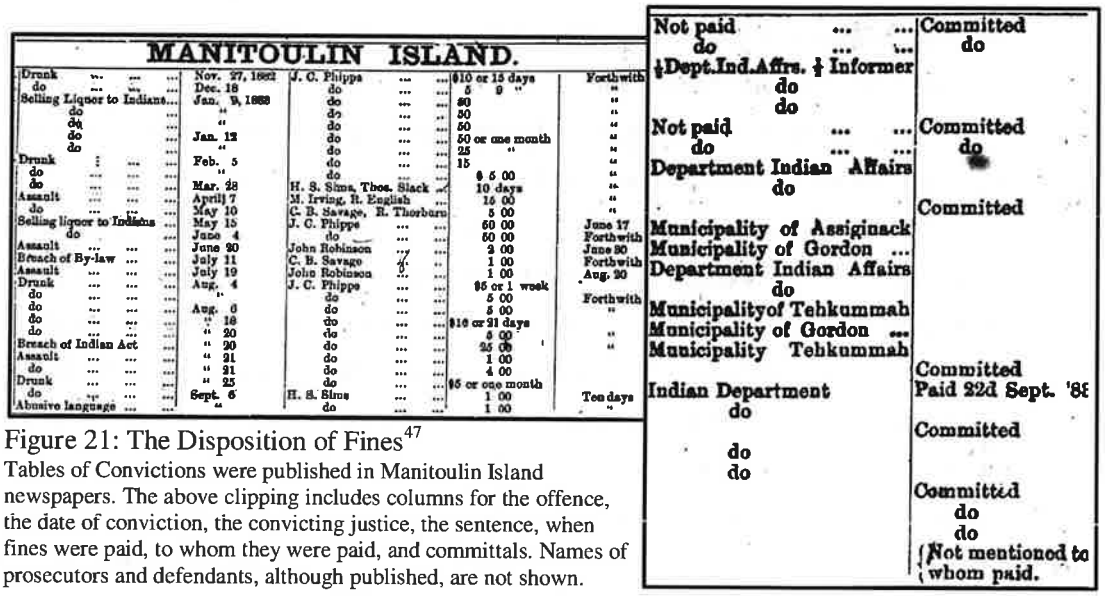
[41] *Indian Act*, 1876, Op. Cit. c. 18, s. 27
[42] Ibid.
[43] Ibid.
[44] Ibid, s. 4.
[45] Ibid, s. 79.

Any person in charge of a water vessel involved in the intoxicant trade to "Indians" could be convicted in the same way, given the same fine, and be liable for the same term of incarceration in a "common gaol, house of correction, lock-up, or other place of confinement" if they defaulted on that fine.[46]



MANITOULIN ISLAND.

Drunk	Nov. 27, 1882	J. C. Phippa	$10 or 15 days	Forthwith	Not paid	Committed
do	Dec. 18	do	5 9 "	"	do	do
Selling Liquor to Indians	Jan. 9, 1883	do	80	"	‡Dept.Ind.Affrs. ‡ Informer	
do	"	do	80	"	do	
do	"	do	50	"	do	
do	Jan. 12	do	50 or one month	"	Not paid	Committed
do	"	do	25 "	"	do	do
Drunk	Feb. 5	do	15	"	Department Indian Affairs	
do	"	do	"	"	do	
do	Mar. 28	H. S. Sims, Thos. Slack	$ 5 00	"		Committed
Assault	April 7	M. Irving, R. English	10 days	"	Municipality of Assiginack	
do	May 10	C. B. Savage, R. Thorburn	15 00	"	Municipality of Gordon ...	
Selling liquor to Indians	May 15	J. C. Phippe	5 00	June 17	Department Indian Affairs	
do	June 4	do	60 00	Forthwith	do	
Assault	June 20	John Robinson	50 00	June 30	Municipalityof Tehkummah	
Breach of By-law	July 11	C. B. Savage	3 00	Forthwith	Municipality of Gordon ...	
Assault	July 19	John Robinson	1 00	Forthwith	Municipality Tehkummah	
Drunk	Aug. 4	J. C. Phippe	1 00	Aug. 20		Committed
do	"	do	$5 or 1 week	Forthwith	Indian Department	Paid 22d Sept. '8
do	Aug. 6	do	5 00	"	do	
do	" 16	do	5 00	"		Committed
do	" 20	do	$10 or 21 days	"	do	
Breach of Indian Act	" 20	do	5 00	"	do	
Assault	" 21	do	25 00	"		Committed
do	" 21	do	1 00		do	
Drunk	" 25	do	4 00		do	
do	Sept. 6	H. S. Sims	$5 or one month	Ten days	Not mentioned to whom paid.	
Abusive language	"	do	1 00	"		
			1 00	"		

Figure 21: The Disposition of Fines[47]
Tables of Convictions were published in Manitoulin Island newspapers. The above clipping includes columns for the offence, the date of conviction, the convicting justice, the sentence, when fines were paid, to whom they were paid, and committals. Names of prosecutors and defendants, although published, are not shown.

Unless used for illness under the direction of a "medical man" or minister of religion, "any Indian or non-treaty Indian" who manufactured, possessed, concealed, sold, exchanged, bartered, supplied, or gave any other Indian an intoxicant could be convicted before a judge, stipendiary magistrate, or two justices of the peace, on the evidence of one witness, in addition to the informer or prosecutor, and sentenced to one to six months' imprisonment with or without hard labour.[48]

In all cases within Section 79, Indians were considered "competent witnesses."[49] Prior to the passing of the 1874 *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, in which, amidst provisions against liquor, Indians were declared competent witnesses,

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[46] *Indian Act*, 1876, Op. Cit. c. 18, s. 79.
[47] Adapted from "Return of Convictions by Her Majesty's Justices of the Peace Within the District of Algoma From 31 March 1883 to 30 September 1883," *Manitoulin Expositor*, 24 November 1883, Manitowaning, Volume: V, No. 24.
[48] *Indian Act*, 1876, Op. Cit. c. 18, s. 79.
[49] Ibid.

colonial authorities encountered obstacles in prosecuting cases against liquor traders because of the uncertain validity of sworn legal oaths according to Christian customs by indigenous persons who were not thought to be Christians.[50] Reginald Good gives the remarkable example of William Gibbard, Fisheries Commissioner and Magistrate of the District of Algoma, deciding in 1863 that as "'a general all prevailing rule it may be clearly stated that no liquor seller, can be convicted by the evidence of an [non-Christian] Indian or a halfbreed' because their unsworn testimony was inadmissible."[51] Phipps concurred that "'it is impossible to carry out the existing Laws against the sale of Liquor to Indians' because in most instances of alleged infraction Indian witnesses could not be found who were deemed competent to 'lay an information upon oath.'"[52] Paradoxically, in their attempts to stop the liquor trade to "Indians," the "most sustained lobby for legislation to be passed admitting testimony from non-Christian Indians in colonial municipal courts in Canada West came from Christian missionaries and Christian missionary organizations."[53] The 1874 amendment made it "lawful" for evidence to be received from

> any Indian or aboriginal native or native of mixed blood, who is destitute of the knowledge of God, and of any fixed and clear belief in religion or in a future state of rewards and punishments, without administering the usual from of oath to any such Indian, aboriginal native or native of mixed blood as aforesaid, upon his solemn affirmation or declaration to tell the truth, the whole truth and nothing but the truth, or in such form as may be approved by such Court, Judge, Stipendiary Magistrate, Coroner or Justice of the Peace, as most binding in his conscience.[54]

These procedures were folded into the 1876 *Indian Act*.[55] In addition, the Department of Justice insisted that "Indian witnesses" and "white men" share equal ground in their entitlement to witness fees.[56]

Various Sections of the 1876 *Indian Act* involved the physical components of the intoxicant trade.[57] The materials of the intoxicant trade gave more autonomy to individual Indian

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[50] 1874 *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, c. 21, s.1; Reginald Good, "Admissibility of Testimony From Non-Christian Indians in the Colonial Municipal Courts of Upper Canada/Canada West," *Windsor Yearbook of Access to Justice*, 23, (2005):90-91.
[51] Inclusion of [non-Christian] by Good. Ibid:90-91.
[52] Ibid.
[53] Ibid:90.
[54] *An Act to amend certain Laws respecting Indians,* 1874, Op. Cit., c. 21, s.3.
[55] *Indian Act*, 1876, Op. Cit., s. 74.
[56] Deputy Minister of Justice Newcombe to the Deputy Superintendent General of Indian Affairs, 11 January 1910, (Ottawa), "Dept. of Justice Opinions – Vol. 3," 1900-1910, National Archives of Canada, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32.
[57] Section 68 instructed that courts could recover any pawn made for intoxicants. Section 81 dealt specifically with the use and forfeiture of water vessels. Utilizing transport technology for such purposes flaunted Indian Affair's principle of removing Indians to less-accessible locations where they would be

Agents and exposed the lack of privacy for Indian wards of the state. Section 80 provided that any container or vessel involved in the trade or use of intoxicants, as well as their contents, could be seized by a constable "wheresoever found on such land or in such place" and destroyed.[58] A formal complaint of the possession of any of these components laid before a judge, stipendiary magistrate, or justice of the peace, with the evidence of "any credible witness," allowed the judicial power to "condemn the Indian or other person in whose possession they were found" to a penalty of fifty to one hundred dollars to be divided between the prosecutor and the Crown.[59] Any person who did not produce "immediate payment" of what was then a large sum would be incarcerated for two to six months, unless they could procure funds while incarcerated.[60] As Justices of the Peace, any Indian Agent could carry out this process.

The 1876 *Indian Act* also legislated direct measures against the state of intoxication. Section 83 made it legal for "any constable, without process of law, to arrest any Indian or non-treaty Indian whom he may find in a state of intoxication, and to convey him to any common gaol, house of correction lock-up or other place of confinement, there to be kept until he shall have become sober" and could be brought before a judge, magistrate, or justice.[61] If, at that point, the individual was convicted of having been intoxicated, they were imprisoned for a maximum of one month.[62] However, a significant factor intervened between conviction and sentencing. Although already convicted, this briefer carceral term depended on the individual informing on others.[63] Facing sentencing, the convicted individual who refused to "give information of the person, place and time from whom, where and when, he procured such intoxicant, and if from any other than Indian or non-treaty Indian, then, if within his knowledge, from whom, where and when such intoxicant was originally procured or received" could find that their sentence was extended by up to fourteen days.[64]

Although not required for Canadian adults as a whole, and certainly not a prevailing characteristic of settler society, the 1876 *Indian Act* also required sobriety as a precursor to the

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"protected" during enculturation. Section 82 involved the forfeiture of every other "article, chattel, commodity or thing." *Indian Act*, 1876, Op. Cit, c. 18.

[58] *Indian Act*, 1876, Op. Cit., 18, s. 80.

[59] Ibid.

[60] Ibid.

[61] Ibid, c. 18, s. 83.

[62] Ibid.

[63] Ibid.

[64] Ibid.

enfranchisement process.[65] Therefore, as Campbell demonstrates, liquor restrictions "helped to define who was an Indian and who was not" for the Federal Government.[66] Nonetheless, the liquor provisions of the *Indian Act* ensured that persons racialized as "Indians" were punished as "Indians" when seen to be demonstrating a racialized proclivity to alcohol whether they had "status" or not.

7.2.1 Judicial Functions of the Department of Indian Affairs

Considerable judicial power was invested in representatives of the Department of Indian Affairs. The 1876 *Indian Act* granted some standing when it directed that legal affidavits could be made before a "judge or clerk of any county or circuit court, or any justice of the peace, or any commissioner for taking affidavits in any of the courts, or the Superintendent-General, or any Indian agent, or any surveyor duly licensed and sworn" and appointed to the task by the Superintendent General.[67]

Under the reign of Queen Victoria, the idea of Justices of the Peace was based on the principle that the monarch was the "principal conservator of the peace within all her dominions; and may give authority to any other to see the peace kept."[68] Justices of the Peace were appointed by the Queen's commission "under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors."[69]Although a directly judicial function was not specified for all Indian Agents until the 1881 *Indian Act* legislated that that all Indian Commissioners, Assistant Indian Commissioners, Indian Superintendents, Indian Inspectors and Indian Agents "shall be *ex officio* a Justice of the Peace for the purposes of this Act," at times, practice preceded legislation in frontier contexts where men who represented the legal power of the government often took on several roles and titles concurrently.[70]

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[65] *Indian Act*, 1876, Op. Cit., c. 18, s. 86 and 93.
[66] Campbell, 2008, Op. Cit.:109.
[67] *Indian Act*, 1876, Op. Cit., c. 18, s. 86 and 95; "Headquarters – Ottawa, Ontario – Interpretation of a Section of the Indian Act by the Minister of Justice Confirming that Indian Land Agents May Serve as Justices of the Peace as Those in the Position of Indian Agent," 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2753, File: 148,479, Access Code: 90.
[68] William Conway Keele, *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Law of Canada, and a Compendious and General View of the Provincial Law of Upper Canada: With Practical Forms, for the Use of the Magistracy*, 3rd edition, (Toronto: H Rowsell, 1851):399.
[69] Ibid:399.
[70] In 1879, as Indian Superintendent IW Powell reported on his travels throughout coastal British Columbia, he noted, "cases were brought before me which I was compelled to deal with in my capacity as

As evident in his involvement as a Magistrate in the fishery conflict, Visiting Superintendent of Indian Affairs Phipps was one such man. In 1878, Phipps sentenced Thomas O'Hara to three months' imprisonment, in default of a fine, for selling liquor to "Indians;" however, after giving security to appear when required by the court, O'Hara chose instead to leave "for parts unknown, not liking the idea of breaking stone for the Sault Ste Marie roads."[71] Phipps lent his approval to changes in the 1880 *Indian Act* which would "materially aid in putting a stop to illicit drinking" by legalizing searches for liquor on Indian Reserves across Canada.[72] The 1880 amendments authorized the search for intoxicants, and the receptacles involved in their manufacture or transport, on reserve, on the person of any Indian or non-treaty Indian, and in any Indian or non-treaty Indian dwelling and by any officer of the Indian Department or constable "wheresoever found on such land or in such place or on the person of such Indian or non-treaty Indian: and on complaint before any judge, Stipendiary Magistrate, or Justice of the Peace, he may, on the evidence of any credible witness... condemn the Indian or other person in whose possession they were found."[73] In this way, 1880 amendments gave Phipps the ability to search for intoxicants prior to the official laying of a complaint. As an Indian Agent Justice of the Peace, Phipps could then adjudicate resultant complaints and lay sentences under the *Indian Act*.

The power of frontier officials could be so great that it appears that, at times, "Indian" wards may have been punished without proper registering of the convictions. In 1880, the *Manitoulin Expositor* reported that "an Indian" convicted by Superintendent Phipps and R English on a charge of intoxication served one week in jail.[74] Although he was convicted and imprisoned, the individual's name does not appear on the published list of convictions for the District of Algoma.[75]

Justice of the Peace." In 1880, A Power, writing on behalf of the Solicitor for Indian Affairs gave the opinion that Sec. 20 Cap. 27 of the Revised Statutes of Ontario gave Indian Superintendents the power to act as Justices of the Peace. *An act to amend The Indian Act, 1880,* SC 1881, c. 17; *Report of the Deputy Superintendent General of Indian Affairs, 1879*, Op. Cit.: 123; A Power for Solicitor Indian Affairs, 19 February 1880, (Ottawa), "Moravian Reserve – Agent John Beattie Inquires if he has Power to Act as a Justice of the Peace," 1880, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2102, File: 18,511, Access Code: 90.

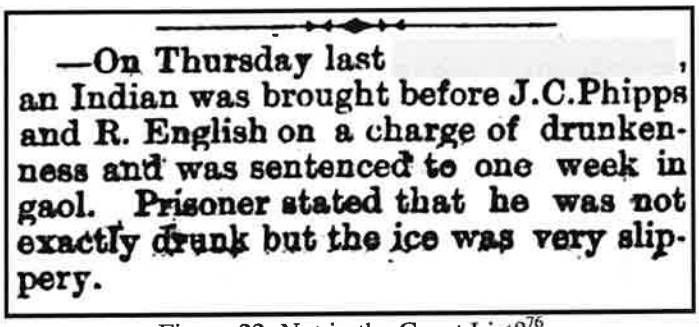
[71] *The Manitoulin Enterprise*, 12 April 1878, Gore Bay, Volume: I.

[72] *Annual Report of the DIA*, 1880, Op. Cit.:20.

[73] *An Act to amend and consolidate the laws respecting Indians*, SC 1880, c. 8, s. 8.

[74] *Manitoulin Expositor*, 28 February 1880, Manitowaning, Volume: I, No. 41.

[75] "Return of Convictions Made by Her Majesty's Justices of the Peace Within the District of Algoma from the December Sessions, 1879, to September 30th, 1880," *Manitoulin Expositor*, 20 November 1880, Manitowaning, Volume: II, No. 79.

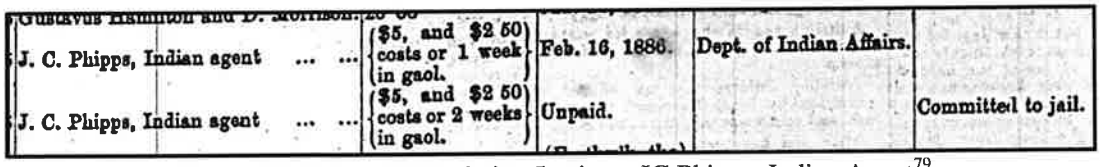


—On Thursday last , an Indian was brought before J.C.Phipps and R. English on a charge of drunkenness and was sentenced to one week in gaol. Prisoner stated that he was not exactly drunk but the ice was very slippery.

Figure 22: Not in the Court List?[76]

Despite their keen attention to indigenous persons, assimilation into state law, and criminality in general, the name of the "Indian" convicted by Indian Agent JC Phipps does not appear in the detailed court lists published in Manitoulin newspapers.

In her examination of the tenure of two Indian Agents on Georgian Bay, one of whom was RJ Lewis of Manitowaning, Brownlie recognizes that, perhaps, the "most decisive power assigned to Indian Agents under the Indian Act was their role in dispensing justice" since, with the powers granted to Indian Agents to act as Justices of the Peace in 1881, for "minor offences (most often for alcohol consumption) the agent frequently laid the charges himself, investigated them, examined the evidence, pronounced the verdict, and, if applicable, assigned a penalty."[77] However, the following year, these already significant judicial powers were increased. 1882 *Indian Act* amendments gave all Indian Agents the "same power as a Stipendiary Magistrate or a Police Magistrate" to adjudicate infractions under the act and removed the right of convicted persons to appeal any judicial order if the fine involved was less than ten dollars.[78]



Gustavus Hamilton and D. Morrison.				
J. C. Phipps, Indian agent	$5, and $2 50 costs or 1 week in gaol.	Feb. 16, 1886.	Dept. of Indian Affairs.	
J. C. Phipps, Indian agent	$5, and $2 50 costs or 2 weeks in gaol.	Unpaid.		Committed to jail.

Figure 23: Name of Convicting Justice – JC Phipps, Indian Agent[79]

In addition to his powers as an Indian Agent, JC Phipps could act as a lone justice, dispense fines, receive fines, and commit "Indians" to jail.

When the Parliamentary Committee examined the 1887 *Indian Act* Amendment Bill, the Honourable Mr. Power objected to the "very unusual and extensive power" given to DIA agents authorized through the Governor in Council, "by subpoena issued by him, to summon any person

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[76] Adapted from *Manitoulin Expositor*, 28 February 1880, Op. Cit.
[77] Lewis was the Manitowaning Agency Indian Agent from 1915 until 1939. Robin Jarvis Brownlie, *A Fatherly Eye: Indian Agents, Government Power, and Aboriginal Resistance in Ontario, 1918-1939*, (Don Mills: Oxford University Press, 2003):35-36, 51.
[78] *An act to further amend The Indian Act, 1880,* SC 1882, c 30, s 3, 4.
[79] Adapted from *Manitoulin Expositor*, 24 April 1886, Volume: 7, No. 49, Manitowaning.

before him and to examine such person under oath in respect to any matter affecting Indians, and to compel the production of papers and writings before him relating to such matters."[80] Any person thus summoned by an agent who did not appear, refused to give evidence, or did not supply requested documents could be imprisoned in the common gaol for a maximum of fourteen days. Power saw this as investing a single individual with the authority of an entire court and did not "think that the officer who is holding the enquiry should be allowed on his own motion to send a man to gaol." A rather less summary process should be available. The Honourable Mr. Kaulbach agreed that these were "extraordinary powers" yet supposed that the Minister "must have some good reason" for them.

Distance was the reason given for this abrupt summary process because, as the Honourable Mr. Abbott explained, if there were disputes in any concern involving "Indians, somebody must enquire into it." However, the highest officers of Indian Affairs could not be expected to travel throughout the country "to make such enquiries, and the person who is appointed to make it must have the right to compel witnesses to attend and to obtain papers or anything else necessary to form a decision in the matter." Abbott saw no reason why such a process should not be approved "in relation to the Indians where the questions to arise would probably not be as important as the questions arising relating to lands." After jocular conjecture that this could mean that the committee members themselves might be compelled by an "inferior officer" to cooperate with an investigation, the committee agreed to the clause.

Universality of application was particularly important to the Department of Indian Affairs because liquor traffic repression was an "important part of the duties of an Indian Agent" yet, try as they might, the DIA could not completely control the movement of indigenous persons across state boundaries.[81] Indian Affairs was apprehensive about the international border with the United States because, in their estimation, the "laws of the latter country, while prohibiting under heavy penalties the sale or gift of ardent spirits to Indians resident therein, do not apply to Indians of a foreign country."[82] The 1895 *Indian Act* gave an Indian Agent the power of two Justices of the Peace

> anywhere within the territorial limits of his jurisdiction as a Justice as defined in his appointment... for all the purposes of the Indian Act or of any other Act respecting

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[80] Unless otherwise indicated, the discussion on this page is based on the following source: *Debates of the Senate of the Dominion of Canada: First Session – Sixth Parliament*, (Ottawa: AS Woodburn, 1887):398-400.

[81] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1889*, (Ottawa: Brown Chamberlin, 1890):xiv.

[82] *Annual Report of the DIA*, 1889, Op. Cit.:xiv.

> Indians, and with respect to any offences against the provisions thereof or against the provisions of section 98 of the Criminal Code (inciting Indians to riotous acts), of part XIII of the Criminal Code; (Offences against morality)… and part XV (Vagrancy).[83]

The territorial limits applied regardless of whether the "Indian or non-treaty Indian charged with or in any way concerned in or effected by the offence, matter or thing to be tried, investigated or dealt with, is or is not within his ordinary jurisdiction, charge or supervision as an Indian agent."[84] As Manitoulin Island is geographically situated as a waypoint between shores, provinces, and countries, its Indian Agents could have a role in the prosecution of numerous offences.

The "*ex officio*" terminology was discontinued in the 1951 *Indian Act* as "Indians" became more closely incorporated into the general state legal and social welfare systems; however, unless their appointment was revoked by the federal Minister, existing "Indian Agents" retained this function.[85] The Governor in Council could confer the authority of a Justice of the Peace. Those invested with this power would then have the powers of two justices for offences under the *Indian Act*, offences under the *Criminal Code* with respect to riotous acts on reserves, robbing "Indian graves," cruelty to animals, common assault, breaking and entering, and vagrancy "where the offence is committed by an Indian or relates to the person or property of an Indian."[86] A provision granted the Minister the ability to redirect annuity and interest monies to the support of dependents when an "Indian" had been "separated by imprisonment from his wife and family."[87] As legislation proceeded following the 1951 *Indian Act*, the section "grandfathering" Indian Agent Justices of the Peace was dropped and a provision affirming the judicial authority of provincial justices was added.[88] The option of conferring judicial powers through the Governor in Council remained.[89] Moreover, the Governor in Council could make regulations resulting, on summary conviction, in up to three months imprisonment and fines not exceeding one hundred dollars or both.[90]

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[83] Deputy Minister of the Department of Justice EL Newcombe to the Secretary of the DIA, 28 November 1905, "Dept. of Justice Opinions – Vol. 3," Op. Cit.
[84] *Indian Act Amendment,* SC 1895, 58 and 59 Victoria, c. 35, s. 7.
[85] *Indian Act*, RS 1951, c. 29, s. 106.
[86] Ibid, c. 29, s.105.
[87] Ibid, c. 29, s.67 (c); *Indian Act.* RSC 1985, c. I-5, s.68(c); *An Act to Amend the Indian Act*, 2000, c. 12, s. 152.
[88] *Indian Act*, RSC 1985, c. I-5, s. 106; c. I-6, s. 107; RS 1985, c. 27 (1st Supp.), s. 203.
[89] Ibid.
[90] Ibid:c. I-6, s. 57.

7.2.2 Financing the "Drunken Indian" Stereotype: Directing the Disposition of Fines

The administrative structure behind state enforcement of liquor laws required funding. The 1876, 1906, and 1927 *Indian Act* stipulations that the moiety of fines resulting from convictions could be divided between the Crown and the prosecutor or informer could inspire freelance detective work and assist provincial law enforcement; however, this sharing out of fines was not always accomplished.[91] Although the *Indian Act* made liquor traffic with Indians illegal, "as in all temperance legislation" Indian Affairs found it rather "somewhat difficult to find white people" to assist them in procuring convictions.[92] In 1898, the Assistant Secretary of the DIA equivocated that while Indian Affairs was "most anxious to encourage every effort to suppress the nefarious traffic" in liquor, it did not have sufficient funds to pursue a "general practice" of bestowing rewards on informers if fines could not be collected or prosecutions were unsuccessful.[93]

Indian Affairs deployed the jurisdictional functions of provincial and territorial governments in order to enforce their assimilative priorities. Nevertheless, they guarded departmental finances and assiduously defended their role as the ultimate state arbiter of all aspects of "Indian" lives. The Deputy Attorney General of the Province of Alberta attempted to secure a moiety of the fines through the office of the Deputy Minister of Justice by arguing that fine collection was "largely made through the efforts of the Police" and part of the cost of the police rested on the newly-founded province.[94] When Deputy Minister of Justice EL Newcombe consulted Indian Affairs, they explained their position that the *Indian Act* provisions were "not intended to refer to such expense of administering the law, as the bearing by the Province of a portion of the expense of maintaining the police."[95] Instead, the DIA had

> recently manifested in another connection, its willingness to reimburse the same Province for any special expenditure in connection with the prosecutions of infractions of the provisions of the Act relating to intoxicants, but even in such cases it would consider its

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[91] *Indian Act*, 1876, c. 18, s. 79; *Indian Act*, 1906, RS, c. 81, s. 135; *Indian Act,* 1927, c. 98, 2. 126; Chief License Inspector James Penrose to Minister of the Interior Sifton, 22 January 1898, (Winnipeg), "Correspondence Regarding the Sale of Intoxicants to the Indians in Manitoba and the Northwest Territories," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 3981, File: 158693, Access Code: 90.

[92] Acting Deputy Superintendent General of DIA JD McLean, Memorandum, Mr. Sifton, 11 December 1903, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

[93] Assistant Secretary AN McNeill to Chief License Inspector James Penrose, 25 January 1898, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

[94] Deputy Attorney General of the Province of Alberta to the Deputy Minister of Justice, 23 July 1906, (Edmonton), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

[95] JD McLean to Deputy Minister of Justice EL Newcombe, 22 August 1906, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

> obligation to depend on circumstance, such as its having asked for or authorized the expenditure.[96]

Indian Affairs privileged its own programs and secured an Order in Council that allowed the "whole of the fines" to be "devoted to a special fund for the suppression of the liquor traffic with the Indians."[97] The rejoinder to the province was that, although Indian Affairs controlled the expenditure of these fines, they were "already applied to the common purpose of maintaining order and vindicating the law" and that the federal government already contributed enough to the Province of Alberta to entitle it to provincial services.[98]

Ontario experienced a similar conundrum when they attempted to bill the DIA for costs that the province incurred in prosecutions for selling liquor to "Indians."[99] The Department of Justice gave the opinion that Indian Affairs was not under any legal obligation to pay because they were not consulted prior to the proceedings of the Ontario License Branch.[100] The need for the DIA to gather information regarding these offences could only be expediently addressed if provincial authorities directed all such cases into Indian Affairs' own prosecutorial system.[101]

The practice of DIA control of fines was strengthened by a gap in the legislation. While the 1906 *Indian Act* attached fines to most liquor prosecutions, and provided that the Governor in Council could "from time to time" instruct that fines could be allocated to a "provincial, municipal or local authority which wholly or in part bears the expense of administering the law," it also made it possible for fines to be "applied in any other manner deemed best adapted to attain the objects of such law."[102] Section 150 stated,

> Every fine, penalty or forfeiture under this Act, except so much thereof as is payable to an informer or person suing therefor, shall belong to His Majesty for the benefit of the band of Indians with respect to which or to one or more members of which the offence was committed, or to which the offender, if an Indian, belongs.[103]

Since some of the sections of the 1906 *Indian Act* did not specifically determine that a moiety was definitely to be paid to an informer or prosecutor, this was taken to mean that the entirety of

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[96] McLean to Newcombe, 22 August 1906, "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[97] Ibid.
[98] Ibid.
[99] Deputy Minister of Justice EL Newcombe to the Deputy Superintendent General of the DIA, *The King vs. Boyd & The King vs. Debossage et al.*, 28 May 1907, (Ottawa), RG10: Department of Indian Affairs, "Dept. of Justice Opinions – Vol. 3," Op. Cit.
[100] Ibid.
[101] Ibid.
[102] *An Act Respecting Indians*, 1906, c. 81, s. 150.
[103] Ibid.

these fines defaulted to the Department of Indian Affairs' funds.[104] Indian Affairs received one hundred fifty-five dollars on behalf of the Manitoulin Island Unceded Band for liquor fines in the year preceding 31 March 1920.[105] Despite these regulations, in some locations, it appeared that Indian Agents were retaining monies from the convictions that they secured.[106] Acting Director of Indian Affairs TRL MacInnes issued a "Circular Letter to all Indian Agents" to advise that the Deputy Minister of Justice had given the opinion that any Indian Agent, "as a permanent employee in the public service is debarred by section 22 of the *Civil Service Act* from collecting fees otherwise to be taken under the Code by a J.P., for his magisterial services."[107] Indian Agents could not claim fees for any cases whether heard under the *Indian Act* or the *Criminal Code*.[108] In 1951, the disposition of any *Indian Act* fines outside of the DIA was recalibrated with the retention of the 1906 provision and the deletion of any distribution of the moieties of fines whatsoever.[109]

7.3 Liquor: The Common Enemy

The Department of Indian Affairs found common cause with other forces of state law as they worked together to apply liquor laws. Through the 1864 *Dunkin Act* and the 1878 *Canada Temperance Act* "electors" could require that a referendum be held on the question of prohibiting liquor sales within their municipality.[110] The *Ontario Temperance Act* instituted provincial

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[104] Sections 135, 140, and 143 did specify the disposition of the moieties of fines. Deputy Minister of Justice Newcombe Assistant Secretary to the Deputy Minister of Justice, 28 October 1907, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.; Deputy Minister of Justice Newcombe to the Secretary of the DIA, 8 November 1907, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

[105] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1920*, Part I, (Ottawa: Thomas Mulvey, 1921):95.

[106] "Circular Letter to all Indian Agents," Acting Director of Indian Affairs TRL MacInnes, 20 August 1938 (Ottawa), "Kwawkewlth Agency – 'J – Judicial' – General correspondence re Indian offences and court cases including crime reports and correspondence with Oakalla Prison Farm, B.C. Provincial Police and RCMP (Shannon file)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 11149, Series C-V-8, File: 23 and 24, Access Code: 32.

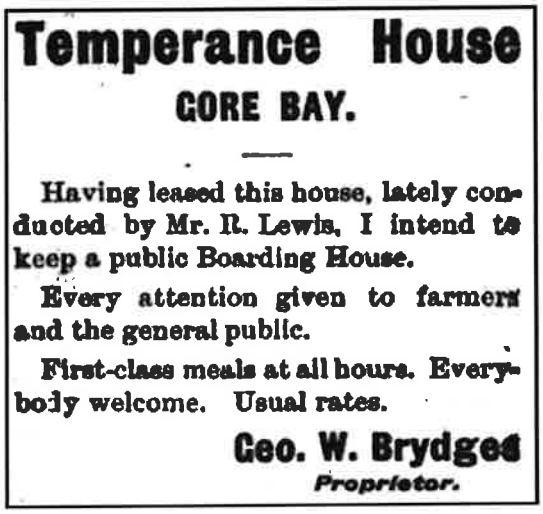
[107] The Deputy Minister of Justice's opinion, first given on 18 November 1926, is quoted in the circular. "Circular Letter to all Indian Agents," Acting Director of Indian Affairs TRL MacInnes, 20 August 1938, (Ottawa), "Kwawkewlth Agency –Oakalla Prison Farm," Op. Cit.

[108] Ibid; "Manitoulin Island Agency – Transfer Ledger 1948 – March 31st, 1951 – 52, part 1953," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12965, File: Series C-V-26, Access Code: 32.

[109] *Indian Act*, 1951, c. 29, s. 102.

[110] Scott Thompson and Gary Genosko, *Punched Drunk: Alcohol, Surveillance, and the LCBO, 1927-1975*, (Halifax: Fernwood Publishing, 2009):25.

prohibition from 1916 to 1927.[111] Christian Temperance movements extended far beyond the years of prohibition. In times of temperance agitation, churches aligned with the views of the DIA in this matter and, in turn, were asked to help.



Temperance House

GORE BAY.

Having leased this house, lately conducted by Mr. R. Lewis, I intend to keep a public Boarding House.

Every attention given to farmers and the general public.

First-class meals at all hours. Everybody welcome. Usual rates.

Geo. W. Brydges

Proprietor.

Figure 24: Gore Bay Temperance House[112]

His Grace the Archbishop of Rupert's Land relayed the distress of the Reverend George Holmes in St. Peter's Mission that a liquor trade was being carried out with the "Half-breeds and Indians" of the Peace River District in 1900.[113] James Smart, Deputy Superintendent General of Indian Affairs and Deputy Minister of the Interior, had difficulty coming to terms with this dismaying information because the *Indian Act* and the *Northwest Territories Act* prohibited the supply of intoxicating liquors to "Indians."[114] Smart gauged that "it should be an easy matter" to use that legislation to arrest any persons implicated in the liquor traffic.[115] Although it was in "the interest" of the Hudson's Bay Company and "the duty" of the NWMP to enforce the law, the Deputy Minister also considered it the "duty of all other well disposed persons in the district to assist in maintaining the law in this matter."[116] Smart assured the Archbishop that he would notify

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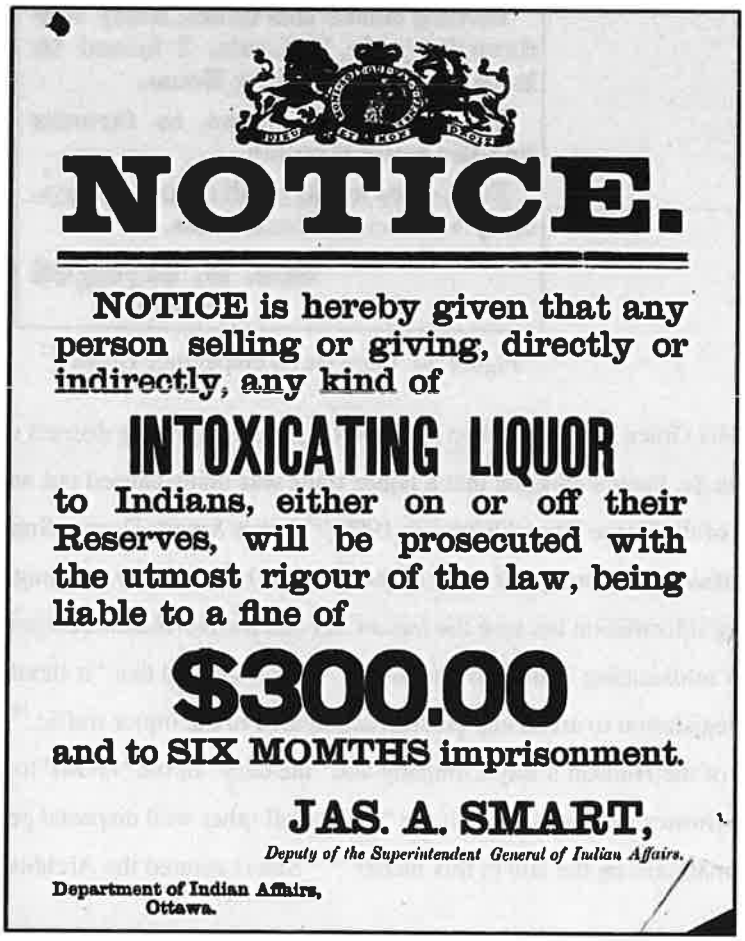
[111] Thompson and Genosko, 2009, Op. Cit.:23.
[112] The *Manitoulin Reformer* was the "organ of the Liberal party of the Manitoulin District." Adapted from *Manitoulin Reformer*, 29 October 1903, Gore Bay, Volume: 2, No. 26.
[113] Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[114] Smart cited the *North West Territories Act* amended by Sections 15 and 16 of Chapter 22 of the *Dominion Statutes* of 1891. Ibid.
[115] Ibid.
[116] Ibid.

the Comptroller of the North West Mounted Police, the Chief Commissioner of the Hudson's Bay Company, and Frederick WG Haultain, Premier and Attorney-General of the North-West Territories, so that territorial and federal authorities could combine their efforts.[117] Smart also called on the Archbishop to help, affirming, "much of the work can be done by the priest, the missionary or the clergyman who is living near or amongst these people."[118] For their information, and to disseminate knowledge of this quintessential aspect of state relationships with "Indians," Smart proposed a poster campaign.



NOTICE.

NOTICE is hereby given that any person selling or giving, directly or indirectly, any kind of

INTOXICATING LIQUOR

to Indians, either on or off their Reserves, will be prosecuted with the utmost rigour of the law, being liable to a fine of

$300.00

and to SIX MOMTHS imprisonment.

JAS. A. SMART,

Deputy of the Superintendent General of Indian Affairs.

Department of Indian Affairs,
Ottawa.

Figure 25: Department of Indian Affairs Notice – Intoxicating Liquor[119]

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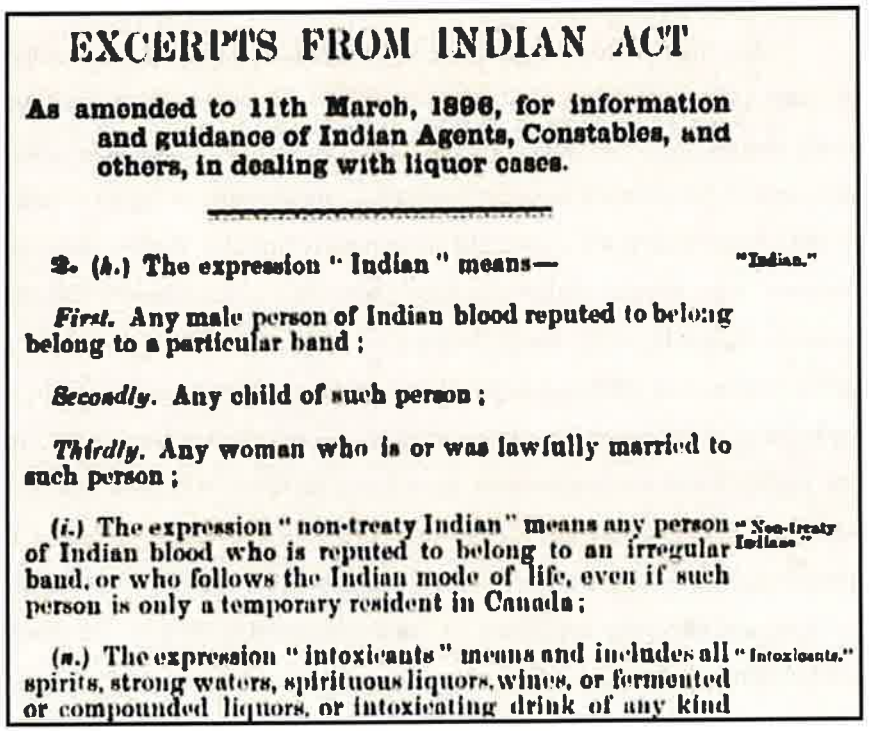
[117] Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.; Michael Charles Thome, *How the West Was Lost: Frederick Haultain and the Foundation of Saskatchewan*, MA Thesis, Department of History, University of Saskatchewan, 2005:1.

[118] Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, Op. Cit.

[119] Adapted from Notice, "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

Smart envisioned a "large supply" of posters explaining *Indian Act* and *North West Territories Act* anti-liquor traffic provisions.[120] A "Warning to the Pubic Against Supplying Intoxicants to Indians" provided the details of the relevant sections of the *Indian Act*, including stipulations that only applied to "Indians" and "non-Treaty Indians," with fines and jail terms capitalized and underlined.[121] The authorities responsible for enforcing this law were provided with a primer in pamphlet form.



EXCERPTS FROM INDIAN ACT

As amended to 11th March, 1896, for information and guidance of Indian Agents, Constables, and others, in dealing with liquor cases.

2. (*h.*) The expression "Indian" means— "Indian."

First. Any male person of Indian blood reputed to belong belong to a particular band;

Secondly. Any child of such person;

Thirdly. Any woman who is or was lawfully married to such person;

(*i.*) The expression "non-treaty Indian" means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada; "Non-treaty Indians"

(*n.*) The expression "intoxicants" means and includes all spirits, strong waters, spirituous liquors, wines, or fermented or compounded liquors, or intoxicating drink of any kind "Intoxicants."

Figure 26: Excerpts From the *Indian Act* for "Dealing with Liquor Cases"[122]

Frank Pedley, Deputy Superintendent General of Indian Affairs, made noteworthy attempts to recalibrate the fixation of government officials, law enforcement, religious bodies, and Canadian society on preventing Indian wards from consuming liquor. Pedley viewed "protection" on reserves as positive and "very necessary at the earlier stages of contact with a stronger race" yet observed that the reserve boundaries and the "disabilities imposed by class

[120] Deputy Minister Jas A Smart to His Grace the Archbishop of Rupert's Land, 25 April 1900, Op. Cit.
[121] Deputy Superintendent General of Indian Affairs, "Warning to the Public against Supplying Intoxicants to Indians," Approved draft, June 1900, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[122] Adapted from "Correspondence Regarding the Sale of Intoxicants," Op. Cit.

legislation" eventually counteracted full assimilation.[123] Since coming into closer contact with "civilization" had "largely corrected the vagueness of the Indians' information as to their legal rights and the powers of the law" they had "in no small measure become independent of the department's assistance." As a result, it was "no longer sufficient to forbid Indians to leave their reserves on objectionable excursions" even though the DIA was "just as vigilant as ever in its use of available means." The legally-systematized idea that "Indians" should be separated from Canadian citizenry in order to become part of it was ironic and did not allow for intentional self-perpetuation of indigenous cultures.

Pedley insisted that the preeminent "feature of morality is that which concerns the use of intoxicants, not only on account of the immediate results, but because intemperance is the root of so many serious evils." While Pedley submitted that the law was flouted in some Indian agencies, he also argued that criminal prosecutions for the consumption of liquor would not be given a great deal of attention if legislation did not expressly forbid it. Pedley observed that the majority of "Indians" were unequivocally temperate. Some were geographically "beyond the danger zone" of access to liquor; however, many "Indians" in more accessible regions were purposefully adopting temperance. Although targeted as valuable markets by purveyors of liquor who could enjoy inflated profits by selling otherwise legal goods as Indian contraband, many simply rejected liquor. Pedley found that government surveillance and First Nations annual cycles of geographical mobility were key factors in the illegal liquor trade. For Pedley, the greatest problems occurred with groups of "hunting Indians" who, while living "at a distance from observation and executive machinery for the enforcement of the law, are near water highways which facilitate the carriage of liquor to points convenient for rendezvous when they come in from their hunting fields." Proximity to the Canada-USA border also provided "ample opportunity for the illicit and nefarious traffic." The DIA's efforts were focused on preventing liquor traffic in the "younger provinces" into which settlers were spreading. In the fiscal year prior to the 1908 report, prosecutions in these provinces resulted in thirty-four fines in Manitoba accruing $1349 and "three sentences of incarceration," seventy-four fines amounting to a total of $1919 in Alberta and five carceral sentences, and an income of $1915 from fifty-eight fines and sixteen imprisonments in Saskatchewan.

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[123] The discussion on this page is based on the following source: Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1908,* (Ottawa: SE Dawson, 1909):xxxi-xxxii.

By 1910, although the DIA called upon its Indian Agents to formally report on the morality of their charges, Pedley thought it difficult to measure morality aside from records of criminal activity.[124] Pedley found part of the difficulty in the lack of common standards with which to measure morality when "not a few excellent, if somewhat narrow-minded people" believed that absolute temperance was the "exclusive index to moral or Christian character."[125] Significantly, a "vastly larger number" held indigenous persons to this abstentious ideal.[126] Pedley called criminal measures into question because even "slight consideration" of the situation revealed the "impossibility of compelling abstinence by legal measures among individuals and communities surrounded" by Canadian societies where intoxicants were legally manufactured and traded.[127] Instead of external application of punishment, sobriety depended on an internal "growth of temperance sentiment alone."[128] From Pedley's perspective, temperance sentiment brought about a "reluctance to treat drinking as a crime among people possessed of a constitutional craving, aggravated by comparative lack of interests and recreations and often by the endurance of hardships, and punishment by fine or incarceration" habitually caused financial strain as the "innocent family" struggled to pay fines and survive without a "provider."[129] Even though liquor suppliers were also subject to the law, Pedley cautioned that over-severity might "create sympathy" in the Canadian public.[130]

7.4 The 1951 *Indian Act*

The 1951 *Indian Act* demonstrated some of the social changes that occurred in Canada following the Second World War. For the first time, if consented to by the Lieutenant-Governor of the province, it allowed the sale of intoxicants to "Indians" for consumption in provincially-authorized public places.[131] Otherwise, any person involved in selling, bartering, supplying or giving intoxicants to "any person on a reserve" or any "Indian outside a reserve" could be prosecuted.[132] The same penalty applied to opening or operating any "place" on a reserve where

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[124] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):xxviii.
[125] Ibid.
[126] Ibid.
[127] Ibid:xxix.
[128] Ibid.
[129] Ibid.
[130] Ibid.
[131] *Indian Act*, 1951, c. 29, s. 95.
[132] Individuals were liable on conviction to a $50 to $300 fine, incarceration for one to six months, or both. *Indian Act*, 1951, c. 29, s. 93.

this might occur as well as to the manufacture of intoxicants on a reserve.[133] "Indians" themselves were still not permitted to be intoxicated, possess intoxicants, or manufacture intoxicants.[134] Even if an "Indian" did procure intoxicants in accordance with federal and provincial laws, the pre-emptive judgement possible on unevenly surveilled reserve lands was reinforced by the provision that a "person who is found (a) with intoxicants in his possession, or (b) intoxicated on a reserve, is guilty of an offence."[135] Injunctions against intoxicants and intoxication did not apply to "cases of sickness or accident"; however, the "burden of proof" was "upon the accused" to prove that this exemption applied.[136]

The *Indian Act* prohibited intoxication until the 1969 *R. v. Drybones* decision of the Supreme Court of Canada cited an unconstitutional infringement of rights and overturned the section of the *Indian Act* that made intoxication in private places illegal for "Indians" while off reserve.[137] The Supreme Court ruled that the conviction of Joseph Drybones for "being intoxicated off a reserve" had been appropriately overturned on appeal. The Court held that the relevant provisions of the *Indian Act* were "rendered inoperative" by the 1960 *Canadian Bill of Rights* because they infringed on the right to "equality before the law" in that Drybones was rendered "guilty of a punishable offence by reason of conduct which would not have been punishable if indulged in by any person who was not an Indian."[138] However, it was still illegal to be intoxicated on an Indian reserve.[139]

In a sense, *Drybones* provided a measure of equality by detaching liquor provisions from individual "Indian" identity and attaching restrictions to location. While, for the most part, non-Indian citizens of Canada were allowed to be intoxicated in private when Indians were not, all persons in Canada could be intoxicated in private as long as they were not on an Indian Reserve at the time. Furthermore, "Indians" had comparatively greater freedom to maintain status while living and travelling off-reserve yet status was still tied to band membership and recognition of band status was tied to reserve governance and treaty agreements.

According to Gary Genosko and Scott Thompson, provincial and federal legislation produced a legal geography of "Indian" identity and reserve life involving, in the case of Ontario,

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[133] *Indian Act*, 1951, c. 29, s. 93.
[134] Convicted person faced fines of $10 to $50 dollars, up to three month's imprisonment, or both. *Indian Act*, 1951, c. 29, s. 94.
[135] On summary conviction, individuals could face to a fine of $10 to $50, imprisonment up to three months, or both. *Indian Act*, 1951, c. 29, s. 96.
[136] *Indian Act*, 1951, c. 29, s. 98.
[137] *R. v. Drybones*, 1970, Supreme Court Ruling 282; Valverde, 2004, Op. Cit.:569.
[138] *R. v. Drybones*, 1970, Op. Cit.
[139] Valverde, 2004, Op. Cit.:568.

a "specific form of alcohol behaviour" heightened when reserves are proximate to small towns with Liquor Control Board of Ontario (LCBO) stores: "since alcohol had to be consumed on private property, and reserve land was public property, any drinking on the reserve was by definition illegal."[140] Genosko and Thompson maintain that, in this way, "public drinking became common for First Nations persons."[141] In the context of popular discriminatory stereotypes of indigenous peoples, Genosko and Thompson's statement is in danger of being misconstrued. Rather, since status "Indians" were legal minors under the guardianship of the Canadian state, any drinking of alcoholic beverages was subject to state correction. Racialized visibilities to Canadian society and law enforcement while off-reserve competed with the inconsistent panoptic visibilities of the reserve. Therefore, any decision made by an "Indian" about where to consume alcoholic beverages might depend on factors such as access to supply, social setting, convenience, cost, and the potential for negative repercussions.

It was not until 1985 that the Manitoba Court of Appeal ruled that "race-specific prohibitions could not be saved by governing through space rather than persons because discrimination is not avoided."[142] Since the "predominant group on a reserve was Indians, the provision was aimed at them and that consequently," in the succinct words of Justice Hall, "'place becomes race.'"[143] As the legislated place-based racial restriction of "Indian" intoxication disintegrated, the Government of Canada

> undertook a major overhaul of the whole Indian Act in which many of the old paternalist techniques of governing aboriginal peoples came to be replaced, in 1985, by a delegated, indirect governance system through which local Indian bands or nations were 'empowered' to deal with their own problems, including drinking.[144]

Intoxicants were once again important mediums influencing legal relationships between "Indians" and the state. The 1985 *Indian Act* specifies the authority of band councils to call special meetings of band electors to enact by-laws "(a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band; (b) prohibiting any person from being intoxicated on the reserve; (c) prohibiting any person from having intoxicants in his possession on the reserve;" and

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[140] Gary Genosko and Scott Thompson, "Tense theory: the temporalities of surveillance," *Theorizing Surveillance: The Panopticon and Beyond*, Ed. David Lyon, (Cuppompton, Devon: Willan Publishing, 2006):126.
[141] Genosko and Thompson, 2006, Op. Cit.:126.
[142] *R. v. Campbell*, 1996, Manitoba Court of Appeal, 7298 (MB CA). Refers to *R. v. Hayden* (1983), Manitoba Court of Appeal, 8 CCC (3d) 33 (MB CA); Valverde, 2004, Op. Cit.:571.
[143] Ibid.
[144] Valverde, 2004, Op. Cit.:568-569; Campbell, 2008, Op. Cit.:105-26.

creating exceptions to these prohibitions.[145] The punishments for breaking these band by-laws remained severe. Persons found guilty under summary conviction of breaking by-laws under (a) may be given fines of one thousand dollars or less, imprisoned for six months or less, or both.[146] Convictions for violating by-laws under (b) or (c) may result in fines of a maximum of one hundred dollars, sentences of three months in prison, or both.[147] Despite decided improvements, the *Indian Act* remains a major legislative arbiter of relationships to the Canadian state and reserves continue as geographies of legal exception to conventional citizenship.

By definition, indigenous peoples are of the lands with which they were created, of which whole they are a part, and with which they have lived "since time immemorial." As European empires sought to control territory in the northern realms of the "New World," diverse landscapes were tied together by trade, colonization, and railroad politics. Being "of the land" was a threat to colonial entrenchment. In Canada, colonization bastardized the idea of diverse people of the land into racialized "Indians" set apart in places of exception where assimilatory programs attempted to impose a conceptual shift to individual property ownership and standardized extraction from the land. For "Indians," colonization made place "race."

7.5 The "Indian List": Geographies of Identity and Liquor Regulation in Ontario

Official federal jurisdiction over "Indians" did not preclude other forms of government from following their lead through their own means. For the most part, provincial authorities were responsible for administering the sale of alcohol.[148] Scott Thompson and Gary Genosko's *Punched Drunk: Alcohol, Surveillance, and the LCBO, 1927-1975* and "Tense theory: the temporalities of surveillance" offer groundbreaking sociological insights into the disciplinary gaze of the Liquor Control Board of Ontario from its establishment in 1927.[149] Between 1927 and 1962, eligible adults who wished to exercise their right were required to hold Liquor Permits for the "legal purchase of alcohol in Ontario – licensing the holder to drink in the same way as a driver's licence" confers driving privileges.[150] Establishments where liquor was sold were also licensed through the LCBO.

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[145] *Indian Act,* 1985, c. I-5, s. 85.1 and s. 85.2, c. 32 (1st Supp.), s. 16.
[146] *Indian Act,* 1985, c. I-5, s. 85.4, c. 32 (1st Supp.), s. 16.
[147] Ibid.
[148] Campbell, 2008, Op. Cit.:109.
[149] Thompson and Genosko, 2009, Op. Cit.; Genosko and Thompson, 2006, Op. Cit.:123-138.
[150] Thompson and Genosko, 2009, Op. Cit:14.

ONTARIO

Liquor License Act

District of Manitoulin

NOTICE is hereby given that A. W. Bradley, of Sheguiandah, Ont., District of Manitoulin, has made application for permission to transfer his tavern license for his hotel at Sheguiandah, Ont., to E. M. Bradley, of the town of Little Current in the said District, and that the said application will be considered at a meeting of the Board of License Commissioners to be held in the Town of Gore Bay, District of Manitoulin, on the 31st day of July, 1909.

(Signed) WM. VINCENT, License Inspector.

Gore Bay, July 17th, 1909. 41-n

Figure 27: Liquor Licensing[151]

When they were advised that an "Indian" from Manitowaning obtained a permit, the Chief Commissioner of the LCBO informed the individual,

> you are an Indian, hence the obtaining by you of liquor permit...was irregular...pursuant to… Liquor Control Act, and the provisions of the Indian Act (Dominion), YOU ARE PROHIBITED AS AN INDIAN from holding a liquor permit and from purchasing, having or consuming any intoxicating liquor (including spirits, beer and wine) at all times. Accordingly, you are prohibited from making any purchase of liquor for home consumption and elsewhere, and from visiting hotel beverage rooms.[152]

In addition to the legal banning of "Indians" from licensed premises and liquor stores, provincial Interdiction Lists were used to identify all individuals who were not allowed to purchase alcoholic beverages.[153] In Ontario, this "Indian List" or "Drunk List" of "chronic and troublesome alcoholics forbidden to buy or possess alcohol," was kept by the Ontario Liquor Board from the 1930s until 1990.[154] Despite its colloquial name, Mariana Valverde clarifies that the Interdiction

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[151] Adapted from *The Recorder*, 22 July 1909, Gore Bay.

[152] Liquor Control Board of Ontario Chief Commissioner to [name withheld, Manitowaning], 23 July 1947, (Toronto), "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants," 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

[153] Campbell, 2008, Op. Cit.:109.

[154] The colloquialism "Indian list" was also used in British Columbia. Barry Mayhew, "Are You on the 'Indian List'? The Evolution of Liquor Laws in British Columbia," *British Columbia History*, 41(2), 2008):9-12; Genosko and Thompson, 2006, Op. Cit.:126; Thompson and Genosko, 2009, Op. Cit.:21; Valverde, 2004, Op. Cit.:566-567.

List was principally "used against white Canadians."[155] The Interdiction List was employed in certain areas of the province: typically in northern Ontario small towns dependent on lumber, mining, and railroad industries where "beer-centred hotels are often the main architectural and social feature."[156] In their attempts to secure legal and police protection against the alcoholism and violence of their relatives, persons from "largely impoverished and largely rural" families, transformed their family members into "symbolic Indians" by putting them on the "Indian List."[157]

LCBO stores are the provincial liquor regulator's most familiar manifestation on the landscape. Nevertheless, Genosko and Thompson argue that, from the time of the LCBO's establishment in 1927, it has been "primarily concerned with the governmental control of liquor" rather than profit.[158] Echoing the larger paternalistic scope of the Department of Indian Affairs, the LCBO employed an extensive bureaucracy. Like the DIA, the LCBO's Interdiction List files "contained information gathered from multiple institutional sources" such as the Ontario Provincial Police (OPP), municipal governments, and aid organizations.[159] Valverde suggests that it may have been the OPP "responsible for policing the rural areas and those Ontario towns too small to have their own police force—that promoted the use of the list among their 'clients,' possibly also generating its popular nickname."[160] For Valverde, "only the legacy of internal Canadian colonialism can explain the otherwise bizarre practice of dubbing the liquor board's official list of alcoholics as 'the Indian list.'"[161] The use of the "Drunken Indian" stereotype, and the lack of responsibility that it implied, justified and facilitated modes of surveillance that would not normally apply to adult members of the Canadian state.

The precedent for prohibition against drinking in bars as well as against possessing alcohol within homes, a restriction that Valverde recognizes as a particularly paternalistic constraint, is found in the *Indian Act*.[162] Prior to the use of interdiction lists, "Indians were the only adult inhabitants of Canada" prohibited from alcohol purchase and consumption in public, private, and home places.[163] Canadian colonialism, demonstrated in "race-specific liquor laws… combined with – and in some ways rooted in – longstanding missionary discourses about

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[155] Valverde, 2004, Op. Cit.:567.
[156] Ibid:571.
[157] Ibid:567-568.
[158] Genosko and Thompson, 2006, Op. Cit.:125.
[159] Ibid:126.
[160] Valverde, 2004, Op. Cit.:571.
[161] Ibid:567.
[162] Ibid.
[163] Ibid:570.

'Indians' and their weakness in regard to alcohol, laid the legal as well as the cultural groundwork" for the operation of provincial Interdiction Lists.[164]

The "Drunken Indian" was a social category with "dramatic transformative potential" to alter legal-geographical rights because adding the names of "white drinkers" to the Interdiction List "could lead to the conversion of their private abodes to public property for the purposes of criminal investigations under the *Liquor Control Act*, thus 'Indianizing' them by rendering private property into a kind of 'reserve' land" where alcohol was banned and police could enter without search warrants.[165]

Genosko and Thompson go further in their description of how liquor was used "to police racial boundaries." [166] They contend that, as the term "Indian List" became part of common parlance during the 1930s, certain "deviant drinking patterns became incorporated into the 'Indian' prototype and a key component of the 'drunken Indian' stereotype; while the strangeness of the convergence of the Indian/Interdicted List caused some whites even to question their own racial purity."[167] While non-Indians could be "Indianized" through the powerful stereotypical association with abuse of liquor, regardless of the assimilative efforts of Indian Affairs, the countervailing route was much more difficult to chart.

Despite explicating key points of the relationship between conception, policy, and practice, Thompson and Genosko's line of reasoning that, by 1876, "First Nations peoples' new classification as Indian/Interdicted had begun to have an impact on their everyday lives as they faced new social situations in which their classification status mediated social action and cultural perceptions" is not historically precise.[168] The 1864 *Dunkin Act* and the 1878 *Canada Temperance Act* provided for local restrictions. Genosko and Thompson state that the Interdiction List did not come into widespread use and everyday parlance until the 1930s.[169] Legal classifications and stereotypes of the "Drunken Indian" preceded, and were well entrenched, before the creation of the 1876 *Indian Act*. Genosko and Thompson make the point that, when provincial liquor boards were established after prohibition, the "convergence of the 'Indian' socio-legal classification reached levels in which systemic classification policy and technology

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[164] Valverde, 2004, Op. Cit.:567.
[165] Genosko and Thompson, 2006, Op. Cit.:126, 186.
[166] Thompson and Genosko, 2009, Op. Cit.:21.
[167] Ibid.
[168] Ibid:175.
[169] Ibid:21.

acted to reinforce the reality that it had helped to create in the first place."[170] Provincial Liquor Board restrictions were important agents of this relationship once they held sway; however, in 1876, the intoxicant-prohibiting federal *Indian Act* itself was the over-arching classification for indigenous peoples.

7.5.1 Intoxicating Indians: Enfranchisement and Racialization

While the LCBO's Interdiction List may not have been created for the purposes of introducing the legal exclusion of "Indians," who were already excluded, the deep social resonance of the Drunken Indian stereotype meant that this gaze fixated most often, most publically, and most indelibly on persons visibly identified through racialized markers of indigenous ancestry. In their struggles to find the most appropriate way to enforce legal and social restrictions against "Indian" intoxication, the LCBO found lists impractical. The LCBO produced regular circulars and disseminated explanatory notices of proper procedure regarding "Indians."[171] The LCBO found that following Indian Affairs' convoluted and incomplete methods of documenting Indian lineage was not practical and instead, vendors "relied upon the 'Indian' or 'Indian mode of life' prototype as the primary means of classification."[172] In everyday life, as Genosko and Thompson make evident, the use of this prototype "played an important role in the development of alcohol abuse-related prejudices towards First Nations populations in Ontario."[173] Nevertheless, the "mode of life" concept, rooted in Indian Affairs, is a direct quotation from the Section 4 definition of the "non-treaty Indian" instituted in the 1876 *Indian Act*.

When questioned, the Department of Indian Affairs strained to explain to the Department of Justice "whether the expression 'follow the Indian mode of life' ha[d] some particular meaning which could be readily identified" and if "a white man [could] come within the meaning of this expression."[174] Indian Affairs considered that a Department of Justice ruling on the Section 126 intoxication provisions of the 1927 *Indian Act* established their applicability to "half-breeds…

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[170] Thompson and Genosko, 2009, Op. Cit.:175.
[171] Ibid:179.
[172] Thompson and Genosko illustrate a 1930 case in which a vendor was charged with serving an "Indian." The ruling held that the person served "was obviously an Indian by appearance" and "no evidence beyond the appearance of the alleged Indian was presented." Ibid:177-178, 181.
[173] Brownlie also mistakenly attributes this phrase. Quoting from Backhouse, Brownlie states that the phrase was "lifted straight out" of the 1894 *Howson* Supreme Court decision rather than from the earlier 1876 *Indian Act*. Brownlie, 2007, Op. Cit.:25; Thompson and Genosko, 2009, Op. Cit.:177-178, 181.
[174] PM Anderson for Acting Deputy Minister of Justice to the Director of Indian Affairs, 25 May 1937, (Ottawa), National Archives of Canada, RG10: Department of Indian Affairs, "Dept. of Justice Opinions – Vol. 4," 1911-1938, Series B-8 , Volume: 11195, File: 3, Access Code: 32.

together with all other persons" considered to conduct themselves according to the "Indian mode of life."[175] Since this interpretation applied the *Indian Act* intoxication provisions to "whites and others of Indian blood," its implications were substantial: this piece of preeminent federal legislation had significance to law enforcement in every Canadian province and territory.[176] Despite its importance, the DIA had "no information by which to identify the expression 'Indian mode of life'" and could not instruct the Department of Justice on whether it could be applied to "a white man."[177] Acting Deputy Minister of Justice FP Varcoe was

> inclined to think that in certain cases it would be possible for the provisions of Paragraph (A) of subsection (1) of section 126 of the Indian Act to apply to white persons as well as to those of Indian blood, but it would not, I think, be satisfactory to endeavor to give any general opinion on this question but rather, if and when, any particular case arises in which there is doubt such case might then be referred to [him] to be dealt with in light of the facts applying thereto...however...the paragraph would apply to white persons only in very exceptional circumstances.[178]

While DIA officials could use this ambiguity to advance their intoxication prohibitions wherever it appeared that liquor was impinging on their paternalistic programs, provincial authorities and individual liquor retailers were left with the problem of evaluating potential customers.

When persons who were refused access to liquor through the LCBO based on their "Indianness" persevered in insisting that they were not legal "Indians," the LCBO required them to present an enfranchisement card.[179] Genosko and Thompson write that the "LCBO's enfranchisement card was the key technology used as proof of non-inclusion within the Indian category."[180] Nonetheless, what the LCBO demanded was an official Department of Indian Affairs Enfranchisement Card signed by DIA authorities.

Requests to produce Enfranchisement Cards were highly problematic. Enfranchisement Cards were only held by individuals who had completed the enfranchisement process. Sobriety was a requirement for enfranchisement. Moreover, any wives, children, or descendants of enfranchised individuals who lost, or never received, "Indian status" as a result of the *Indian Act*'s narrow legal delineations based on relationships to adult males, did not carry

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[175] Secretary TRL MacInnes to the Deputy Minister of Justice, 21 May 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 3," Op. Cit.
[176] Ibid.
[177] Acting Director of Indian Affairs to the Secretary of the Deputy Minister of Justice, 27 May 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 4," Op. Cit.
[178] Acting Deputy Minister of Justice FP Varcoe to the Director of Indian Affairs, 29 May 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 4," Op. Cit.
[179] Thompson and Genosko, 2009, Op. Cit.:127, 179.
[180] Ibid:179.

Enfranchisement Cards. Nonetheless, they, in addition to other non-status persons, might be racially or socially classed "Indians."

Persons who possessed Enfranchisement Cards, "even with their evidence of 'white' (assimilated) status, were not automatically granted access to liquor" by vendors who had the right to refuse them service.[181] The ineffectiveness of the Enfranchisement Card requirement reveals a hypocrisy of doubt about the Federal Government's assimilative program. Unless a person racialized as an "Indian" was an adult who had personally been vetted by the DIA for enfranchisement and granted an Enfranchisement Card, there was no route to navigate through the administrative protocols of purchasing liquor in Ontario. Those who had been granted passage through their Enfranchisement Card still faced opposition.

If an adult was enfranchised, in order to access liquor rights, they had to disassociate with groups of "Indians" and maintain the public discipline of not exhibiting "Indian" ways of life. Persons of "Indian blood" who were "reputed" to have any association with an "irregular band" or an "Indian mode of life" were not considered fully assimilated even if they lacked, or had never possessed, "Indian status." Therefore, both an individual who had been enfranchised and held an Enfranchisement Card and a person precluded from Indian status by, for example, the enfranchisement of their grandfather could be assessed by federal authorities, provincial regulators, law enforcement, and the judiciary as if they might have "reverted" to cultural forms that the Department of Indian Affairs avowed would be overcome by a linear progression from "savagery" to "civilization." The governmental logic of the progressive civilization of "Indian" legal minors towards the adult responsibilities of membership in the state did not hold.

7.5.2 Indicting Ontario Indians: 1951 *Indian Act* Concessions and Interdiction Prosecutions

From 1954, when Ontario took the 1951 *Indian Act* option of allowing liquor consumption in licensed premises, while the right of purchasing liquor in LCBO stores was still withheld, "First Nations peoples were overrepresented on both the Interdicted Lists and in interdiction-related convictions until the list's demise in the 1990s."[182] Before this right was legislated, appearance on Interdiction Lists was not necessary for the prosecution of "Indians" who could, in any case, be charged under the *Indian Act*. Prior to 1949, Ontario had not seen any Interdiction List convictions "but they increased substantially to over eight hundred individuals

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[181] Thompson and Genosko, 2009, Op. Cit.:127, 179.
[182] Ibid:182-183.

by the late 1960s and 'coincidentally' appeared alongside the right to purchase alcohol acquired by First Nations."[183] Genosko and Thompson's Indian/Interdiction argument is very compelling in light of these legislative changes. Genosko and Thompson assert that by the "1970s, the integration of Indian/Interdiction into everyday racist common sense was so pervasive that the two were inseparable."[184] The Drunken Indian stereotype has certainly endured.

Valverde identifies a small number of Indian Reserve inhabitants on the Ontario "Indian List."[185] Although these individuals were most likely "Indians," as was reflected by their geographical location, they did not use the Interdiction List's common name.[186] Rather, they referred to the Interdiction List as "'the list of those who have problems with alcohol'," or the "blacklist."[187] A mother corresponded with the LCBO regarding putting her son on the "blacklist" as did a man who wrote from another reserve to have his own name included on the list.[188] Conceivably, not calling the Interdiction List by its common name was a form of resistance through nomenclature, albeit an act of resistance that trades one tale of discrimination for another.

Voluntary requests for inclusion on the list were automatically adopted without the usual Interdiction List investigations.[189] Letters from individuals living on reserves to the LCBO "show local police – including sometimes aboriginal, reserve-based police – putting pressure on Indians to write 'voluntarily' to get themselves put on the list."[190] Valverde describes "voluntary" requests such as a letter that

> would seem heartfelt, except for the fact that the letter is addressed not to the liquor board but to a man that the file later reveals to be an OPP corporal. The male alcoholic, who according to both the reserve (Indian) police and the (white) provincial police, was a danger to his wife and children when he drank.[191]

Another voluntary interdiction request was written on police stationery and, Valverde believed, appeared to have been dictated by a police officer rather than the subject petitioning to be added to the list.[192]

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[183] Thompson and Genosko, 2009, Op. Cit.:182-183.
[184] Ibid.
[185] While Aboriginal ancestry itself cannot be determined from Ontario interdiction list files, Valverde found that 18 of 154 files in her study referred to individuals living on reserves. Valverde, 2004, Op. Cit.:578.
[186] Ibid.
[187] Ibid:570-571.
[188] Ibid.
[189] Ibid:578.
[190] Ibid.
[191] Ibid:578-9.
[192] Ibid.

For the most part, it was unusual for "white police" to ask for formal interdiction orders; however, the interdiction files of some indigenous persons reveal that social workers attempted to invoke the list as a method of applying pressure to allegedly neglectful or abusive parents without officially involving the police.[193] A Band Council composed a formal resolution to request the addition of three individuals from their First Nation to the Interdiction List.[194] Valverde postulates that bands "simply wanted the interdiction as an additional legal tool to manage the risks of disorder" flowing from colonialism because former methods of maintaining good order, such as the indigenous practice of banishment, were no longer tenable.[195]

Systematized racism belied the Department of Indian Affairs' contention that all "Indians" could be completely assimilated until there was no longer any "Indian problem." Discriminatory treatment extended to the provinces which inherited portions of these prejudices when their governmental jurisdiction took over parts of the larger system of "Indian" administration. Genosko and Thompson demonstrate that the "disciplinary technology" of the LCBO was "not evenly applied" because, for instance, an "Indian" woman "would have experienced a statistically significant greater likelihood than did her 'white' counterpart of receiving severe disciplinary action" from the LCBO.[196] The LCBO built its policies respecting "Indians" on the foundations of the Drunken Indian stereotype.[197] These discriminatory conceptions were woven into federal legislation and provincial law enforcement practices before the LCBO was convened.

While, in approved circumstances, the purchase of alcoholic beverages by "Indians" was legal, public intoxication was criminal and the Drunken Indian stereotype equated one with the other. Since LCBO vendors were obliged to administer alcohol responsibly, even the 1954 granting of the legal right of "Indians" to purchase alcohol did not preclude racialized prohibition because an "'Indian-looking' person was considered suspect and thus by dint of classification a potential problem drinker" whether or not they lived on a reserve.[198] Municipalities also defined "Indians" in ways that highlighted their potential for nuisance, violence, and criminality. Valverde's elucidation of the ways that city governance structures "see" finds "little or no

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[193] The three persons were later charged with breaching the order. Valverde, 2004, Op. Cit.:580.
[194] Ibid:580.
[195] Ibid:578-581.
[196] Thompson and Genosko, 2009, Op. Cit.:20.
[197] Ibid:167.
[198] Ibid:126-127.

distinction between objectionable buildings and objectionable types of people."[199] As North American municipalities developed, "Indians" were frequently "subject to the same kind of spatially exclusionary rules as dangerous trades, and municipal ordinances often consisted of nothing more than rather random lists of types of people and types of businesses or trades, with little or no categorization."[200] The prejudicial association of indigenous identities with criminal behaviour is endemic to supposedly lawful structures at all levels of state function.

7.6 Peroratio: Intoxicating Incarceration

This chapter demonstrates that the elision of moral ideologies of temperance with stereotypes of indigenous identity was as beguiling for the reforming minds of the Department of Indian Affairs as it was treacherous for indigenous peoples. By smothering "Indians" in the duplicitous identity of moral naivety and moral threat, the Department of Indian Affairs justified, and perpetuated, their own bureaucratic existence. The legislative segregation of the *Indian Act* and the assimilative geographic quarantine of "status Indians" on reserves reinforced this social construction. In addition to their formidable powers of guardianship, Indian Affairs and law enforcement officials knew where to look for, and were given the legal right to look at, an entire class of racialized individuals who were already preconceived as offenders. The insidious aspersion of the "Drunken Indian" enforced reserve boundaries as it made anyone associated with its racialized or behavioural traits out of place in Canadian society and disproportionately accessible to state intervention. The legal geographies of "Indian" identities are criminalizing.

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[199] Mariana Valverde, "Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance," *Law & Society Review*, 45(2), (2011):277-312.
[200] Ibid.

Chapter 8

Assimilation Through Incarceration: Punitive Restriction

At times, for the paternalistic Department of Indian Affairs, summary convictions resulting in fines and the sharp coercive measure of imprisonment were the humane methods of achieving their assimilationist purposes. If punishment of "uncivilized" behaviour was the goal, a Wikwemikong parish priest greatly preferred that another method be applied to "Indians." After years of "reflecting with sorrow upon the ineffective way some vices especially lewdness and drunkeness" were punished, the reverend sent suggestions for more effective remedial instruments to Indian Affairs.[1] The priest observed that persons who were "addicted to those disorders" cared "not a straw" if they were assessed fines and, ordinarily, had neither the "means nor will of redeeming themselves from imprisonment." Regrettably, the payment of fines only caused suffering to their families. From the priest's perspective, jail was not a legitimate penalty because it allowed idleness and "Indian" prisoners received better fare while incarcerated than they did at home. Moreover, the government bore the expense of feeding prisoners. The Wikwemikong clergyman isolated the problem: by imprisoning "Indians," the government was making the "mistake" of "dealing with them as with white men" when in many other respects they were "treated as minors." The priest discerned a pivotal logical flaw of the *Indian Act*.

The Wikwemikong cleric enjoined the Department of Indian Affairs to "let them be punished as minors or wicked boys." He had been told by a missionary that, in the USA Rocky Mountains, a "delinquent" recidivist was severely flogged in the presence of the entire band and this treatment had a "wonderful effect." Since the "Indians" of Wikwemikong, "dread public denunciation," the priest reasoned that this type of "public degradation" would be inexpensive and effective. While the Department of Indian Affairs was cognizant of the challenge of "providing a punishment suitable to the Indian," drunkenness was "not always as much their fault" as it was caused by "unscrupulous white men" illegally selling liquor for profit.[2] As they

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[1] The discussion on this page is based on the following source: [Name withheld] to Deputy General of Indian Affairs, 9 April 1894, (Wikwemikong), "Manitowaning Agency – Correspondence from the Reverend..., Parish Priest on the Wikwemikong Reserve regarding the conduct of the Indians," 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2751, File: 148,137, Access Code: 90.

[2] Department of Indian Affairs to [Name withheld], 12 April 1894, (Ottawa), "Manitowaning Agency – Correspondence from the Reverend..., Parish Priest on the Wikwemikong Reserve regarding the conduct

strove to impose the heaviest punishment on these profiteers, Indian Affairs asked for the assistance of "law abiding citizens" in "bringing offenders to justice" by reporting them to DIA Agents so that they could be prosecuted according to existing laws which were "amply sufficient, whenever… honestly and impartiality administered."[3] Indian Affairs did not believe the priest's suggestion of the "severe and exceptional measure of corporal punishment" could be supported by public opinion.[4] Moreover, corporal punishment would cause "Indians" to lose the very self-respect that the DIA, in its conceit, claimed to engender.[5]

The Wikwemikong priest was requested to turn over his information to the Indian Agent.[6] While Manitoulin Indian Agent AM Ironside was asked to pursue the priest's complaint, he was encouraged to remember, "it is the white man (who should know better) that the Department wishes to punish rather than the Indian, who were it not for the white man, would probably not have offended; but of course the Indian offenders must also be punished if it be considered necessary to do so to prevent other Indians copying their vicious example."[7] To this end, Ironside was asked to warn individuals suspected of wrongdoing that the DIA would "if they continue in their evil courses cause the severest punishment to be visited upon them."[8] Despite Indian Affairs' tone of enlightened superiority, committing "Indian" wards to assimilative incarceration was as severe as it was discriminatory.

For people occupied in indigenous economies of harvesting from the land, jail terms could be especially difficult at certain times of year. An individual who resisted arrest when he was "charged by the Indian constable with being drunk in Manitowaning" was sentenced to a month in jail with hard labour.[9] The *Manitoulin Expositor* remarked that this sentence would be particularly difficult because it would take place during the annual sugarbush harvest.[10] The convicted man was warned that if he did not disclose where he procured the liquor before his carceral term expired, it would be extended by fourteen days.[11] The Department of Indian Affairs

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of the Indians," 1894, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2751, File: 148,137, Access Code: 90.
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Deputy General of Indian Affairs to Acting Indian Superintendent AM Ironside, 12 April 1894, (Ottawa), "Manitowaning Agency – Correspondence from the Reverend," 1894, Op. Cit.
[8] Ibid.
[9] *Manitoulin Expositor*, 27 March 1880, Manitowaning, Volume: I, No. 45.
[10] Ibid.
[11] Ibid.

jealously guarded the paternalistic authority given them by the Canadian state to radically alter the lives of their charges.

For Deputy Superintendent General James Smart, the *Indian Act* intoxication provisions had assimilative, as well as protective functions. Despite the relative rarity of securing convictions against settlers who supplied "Indians" with intoxicants, Smart contended that the

> enactment of special legislation recognizes the fact that the Indians require exceptional protection from their own natural fondness for strong drink, as well as from having temptation put in their way by unscrupulous miscreants whose lust of gain would outweigh every consideration of morality and humanity... While the design of the special legislation referred to contemplates the compulsion of sobriety on the part of individuals who may lack the latent power or desire to abstain, it has a much wider and higher one, viz: to assist in the development of character and power to resist temptation among the people as a whole.[12]

In the *Annual Report of the Department of Indian Affairs*, Smart singled out Manitowaning Indian Superintendent BW Ross' statement that the West Bay (M'Chigeeng) "Indians" had access to settlers who might supply them with liquor yet had "learned to shield themselves" behind "moral barriers."[13] Smart asserted that "Indians are beyond dispute a law respecting people, and when occasionally some serious crime is committed by one of their number, it attracts the more attention from its rarity, and causes alarm if of a character to suggest that racial antagonism may still be slumbering."[14] The potential for racialized tensions did not dissipate as settlement consumed indigenous territories.

While the legal "place" of "Indians" contracted within ever-shrinking reserves and legislation rejected their ability to address the state as adults, let alone as nations, the inverse was occurring in adjacent towns and villages. The colonizing state drove the geographic expansion of settlements that brought with them markers of legal adult autonomy such as the ability to purchase liquor and to become leaders in political governance at municipal, provincial, and federal scales. As settlement and the administrative apparatus of the state increased in tandem, legal disparities such as the *Indian Act* intoxicant provisions reinforced racializations of "Indians." In the legal geography of Manitoulin Island, proliferating liquor establishments were moving gateposts of exclusion.

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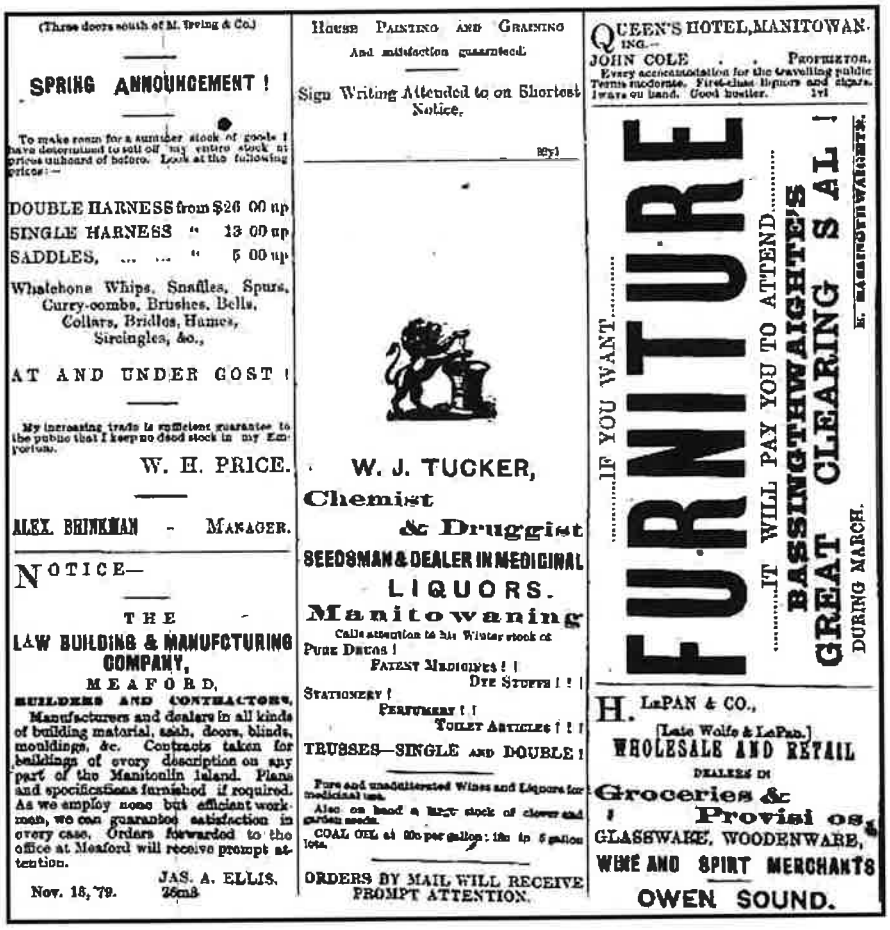
[12] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1898*, (Ottawa: SE Dawson, 1899):xxv.
[13] Ibid.
[14] Ibid.



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AT AND UNDER COST !

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W. H. PRICE.

ALEX. BRINKMAN - MANAGER.

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LAW BUILDING & MANUFCTURING COMPANY,

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BUILDERS AND CONTRACTORS,

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DEALERS IN

Groceries & Provisions,

GLASSWARE, WOODENWARE,

WINE AND SPIRIT MERCHANTS

OWEN SOUND.

Figure 28: The Juxtaposition of Law and Liquor[15]

The Law Building Company that constructed the provincial Manitoulin lock-ups shares a newspaper page with advertisements for the sale of liquor to settlers. The same liquor would be unlawfully sold, possessed, and consumed if "Indians" were the customers. If found guilty, those involved in the transaction would soon be in contact with the structures provided by the Law Building Company.

A settler attempted to bribe an "Indian" with ten dollars to obtain liquor at one of the Manitoulin Island hotels and inform on the proprietor.[16] In describing the attempt, the *Manitoulin Expositor* reported that, in "justice to the Indian… he would take no part in the proceeding whatever which goes to show that even the dark men of the Island are more honorable than some of the white race."[17] The Wikwemikong priest's avocation of the efficacy of public shame is an appalling illustration of jarring contradictions in the assimilative plan to fashion "white men" from the cloth of "Indians." Everyday interactions between the two could result in the disproportionate incarceration of indigenous peoples.

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[15] Adapted from *Manitoulin Expositor*, 13 March 1880, Manitowaning, Volume: I, No. 43.
[16] *Manitoulin Expositor*, 20 March 1880, Volume: I, No. 44, Manitowaning.
[17] Ibid.

8.1 Policing "Indians" and "Indians" as Police

Discussing amendments to the *Indian Act*, and unsure if he was being fanciful because "Indians are placed possibly in this respect differently from other classes of people," Visiting Superintendent William Fisher tentatively asked if police forces could be elected or appointed from the ranks of the bands that they would serve.[18] Officers would be required to provide protection and transport persons accused of liquor offences to the nearest lock-up where they would be "dealt with in the ordinary way."[19] Fisher's rationale was that he was often unable to procure a policeman when needed. If authority were given to "Indian" police officers, Fisher did not "intend that it should supersede the ordinary force authorized by law" but that the new officers would be "merely an addition" that would lend reserves convenient access to increased security.[20]

The Department of Indian Affairs anticipated that placing "Indian Constables" on reserves would combat the liquor trade as well as diminish other types of offences on reserves "so situated that they are specially exposed to the aggressions of evil-disposed white men."[21] In 1889, "Indians" in the North-West were already "doing good service as scouts attached to the Mounted Police Force."[22] The recruitment of Indian Constables involved soliciting Indian Agents for recommendations of "reliable and intelligent Indians," applying through Indian Affairs to the Department of Justice for appointments under the *Dominion Police Act*, and distributing approved commissions issued by the Department of Justice.[23] Badges were given to Indian Constables to wear on their arms.[24] Superintendent General of Indian Affairs Edgar Dewdney believed that having Indian Constables on reserves would make the "detection of crime... more certain, and proof of guilt... more easily obtained than it could be were a white man to hold the office; besides...by employing Indians as police" the DIA was able to maintain their ever-present insistence on economy.[25]

The wisdom of taking this course of action on the Restigouche Reserve was questioned. Priest and Indian Agent Drapeau decried the liquor sellers who plied their trade during the

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[18] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1880,* (Ottawa: Maclean, Roger & Co., 1881):50.
[19] Ibid.
[20] Ibid.
[21] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1889,* (Ottawa: Brown Chamberlin, 1890):xiii-xiv.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.

summer months.[26] A grant for the establishment of a lock-up at Cross Point had been secured from the Indian Land Management Fund for the township of Mann.[27] The Mann lock-up was supposedly "intended for the use of Indians as well as White Men."[28] However, the lock-up was neither convenient to the reserve nor equipped for winter.[29] Furthermore, it was asserted, "Indians cannot be kept there with White Men."[30] The suggestion that a lock-up be erected on the Restigouche Reserve was endorsed.[31] In 1898, the expenses of building a reserve lock-up were applied for and approved.[32]

Shortly thereafter, the Secretary Treasurer of the Municipal Council of Mann requested that Indian Affairs relinquish their claim to the Mann Lock-up in order to facilitate the township in making extensive repairs to its larger Courthouse structure.[33] The Mann Lock-up was no longer used because of the new reserve lock-up within a half-mile of the Courthouse in the contiguous township.[34] A policing issue complicated the transfer of law enforcement facilities to the Restigouche Reserve. A meeting of the Indian Agent, Chief, and Councillors resolved, an "Indian

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[26] *Annual Report of the DIA,* 1880, Op. Cit.:32

[27] Drapeau to Superintendent of Indian Affairs, 24 August 1880, (Cross Point, Restigouche), "Restigouche Reserve – Construction of a Lock-up and Council Room," 1880-1900, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2120, File: 22,787, Part 1, Access Code: 90; Extract, 23 October 1880, "Restigouche Reserve," Op. Cit.; Township of Mann Motion Passed and Certified by Mayor, "Restigouche Reserve," Op. Cit.; L Vankoughnet to the Accountant, 29 October 1880, "Restigouche Reserve," Op. Cit.; Department of Indian Affairs Acting Accountant, 27 April 1897, (Ottawa), "Restigouche Reserve," Op. Cit.; Acting Secretary of the DIA to Indian Agent Dr. Venner, 27 April 1897, (Ottawa), "Restigouche Reserve," Op. Cit.; *Annual Report of the DIA,* 1880, Op. Cit.: 32; *Annual Report of the DIA,* 1881, Op. Cit.: 87.

[28] Extract from letter from Polycarp Martin and Noel Busqua, 12 April 1897, (Restigouche), "Restigouche Reserve," Op. Cit.

[29] Ibid.

[30] Ibid.

[31] Ibid; Indian Agent Venner, 14 April 1897, (Campbellton, NB), "Restigouche Reserve," Op. Cit.

[32] Superintendent of Indian Affairs to His Excellency the Governor General in Council, 23 March 1898, (Ottawa), "Restigouche Reserve," Op. Cit.; Assistant Secretary AN McNeill to Acting Indian Agent Jeremie Pitre, 14 April 1898, (Ottawa), "Restigouche Reserve," Op. Cit.; S Bray to the Secretary of the DIA, 13 April 1898, (Ottawa), "Restigouche Reserve," Op. Cit.; Secretary of the DIA JD McLean to Acting Indian Agent Jeremie Pitre, 9 April 1898, (Ottawa), "Restigouche Reserve," Op. Cit.; Clerk of the Privy Council to the Superintendent General of DIA, Extract from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 9 April 1898, "Restigouche Reserve," Op. Cit.

[33] Secretary Treasurer of the Municipal Council of the Township of Mann to the Superintendent of Indian Affairs, Cross Point, 13 April 1899, (Cross Point), "Restigouche Reserve," Op. Cit.

[34] Assistant Secretary of the DIA to Indian Agent Jeremie Pitre, 17 April 1899, (Ottawa), "Restigouche Reserve," Op. Cit.; Secretary of the DIA, Memorandum for the Information of the Deputy Minister, 28 April 1899, "Restigouche Reserve," Op. Cit.

police officer has proven to be a failure."[35] The Department of Indian Affairs was asked to immediately send "a stranger specially a white man for policeman who would not belong to any party and consequently would give justice to every body, and to who every body would obey."[36] Part of the justification for this action was that a "good white policeman" could collect fines to defray his salary while an Indian Policeman could not because of close relationships on reserve.[37]

8.1.1 Policing Ontario Reserves

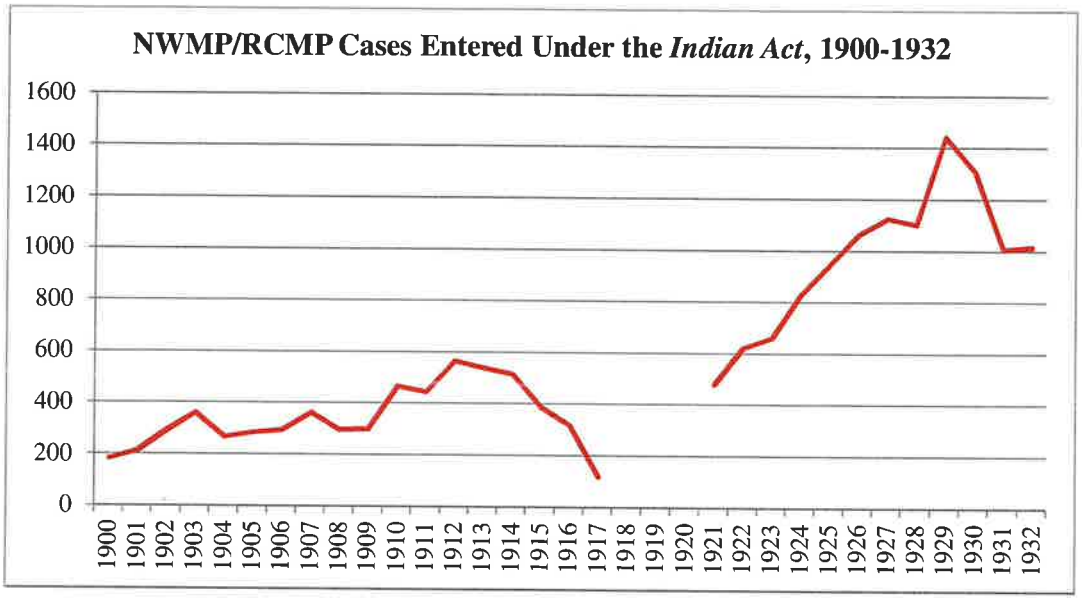

Figure 29: Total Number of NWMP/RCMP Cases Under the *Indian Act*, 1900-1932[38]

Dominion Constables and the RCMP enforced the *Indian Act* as well as the "ordinary laws of the country" on Indian Reserves and, in their inspections of settler towns in eastern and western Ontario, detected illegal sales of liquor to "Indian" wards of the state.[39] The RCMP, formed in 1919 through the merging of the super-provincial NWMP and Dominion Police forces, held the responsibility of enforcing law and order, according to the *Criminal Code*, on Indian

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[35] Indian Agent Jeremie Pitre, Chief, and Councillors to the Secretary of the DIA, 14 April 1900, (Ste. Anne de Restigouche), "Restigouche Reserve," Op. Cit.
[36] Ibid.
[37] Ibid.
[38] Reports of the North-West Mounted Police, 1901-1903; Reports of the Royal North-West Mounted Police, 1904-1916, 1918; Reports of the Royal Canadian Mounted Police, 1920-1932.
[39] *Report of the Royal Canadian Mounted Police for the Year Ended September 31, 1923*, (Ottawa: FA Acland, Printed by Order of Parliament, 1924):20; *Report of the Royal Canadian Mounted Police for the Year Ended September 30, 1925*, (Ottawa: FA Acland, Printed by Order of Parliament, 1926):36.

Reserves, in National Parks, and throughout the territories.[40] The RCMP was also responsible for cases involving departments of the Federal Government.[41]

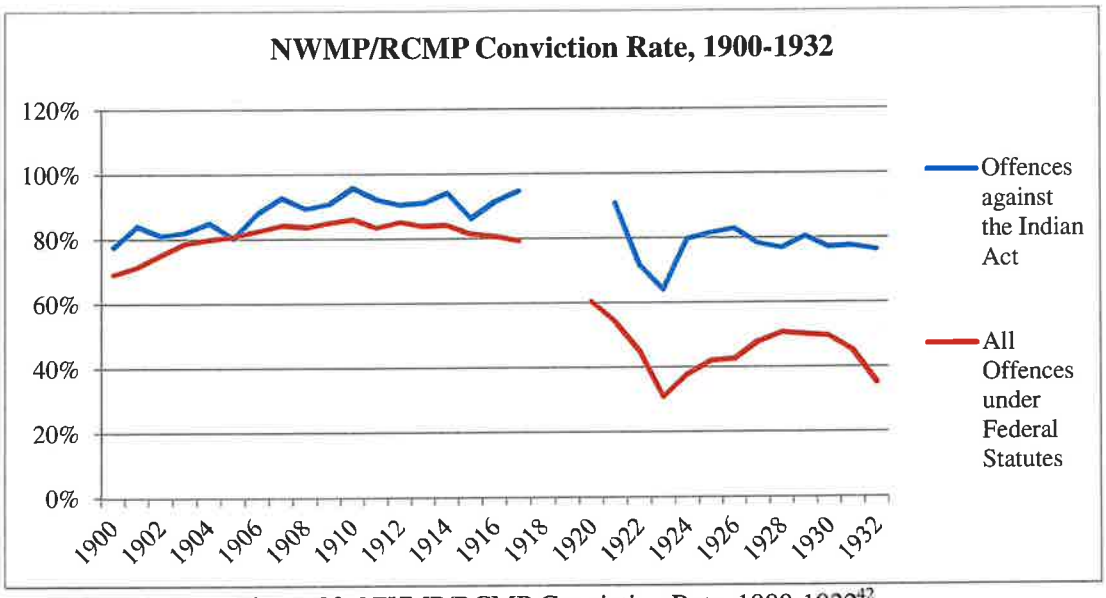

Figure 30: NWMP/RCMP Conviction Rate, 1900-1932[42]
Convictions under the *Indian Act* exceeded the average conviction rate for all federal statutes.

Divergences between state law enforcement and members of the Six Nations, a Confederacy that precedes and surpasses provincial and international borders, attract media attention and are often the catalysts for debates about moral right, legal power, and the authority of indigenous self-governance. The RCMP has been called upon to "support the officials of the Department of Indian Affairs" in locations such as the Grand River Indian Reserve where, in 1923, it was "necessary" to place a detachment even though the RCMP deemed it "another example of duties which impose labour without overt results."[43] The RCMP reported that an "element" had taken "a view" that was "incompatible with the administration of the laws of the Dominion."[44] The ensuing dispute between this element and the DIA "issued in something very like a general defiance of authority."[45] Arrest warrants had not been executed for several years, police officers had been ejected from the reserve, and "no constable had set foot upon it for six

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[40] *Report of the Royal Canadian Mounted Police*, 1923, Op. Cit.:14; The RCMP's History, 2007-07-09, <<http://www.rcmp-grc.gc.ca/hist/index-eng.htm>>
[41] Ibid.
[42] Ibid.
[43] *Report of the Royal Canadian Mounted Police*, 1923, Op. Cit.:14.
[44] Ibid:20.
[45] Ibid.

months."[46] On 7 December 1922, with Inland Revenue Officers, county constables, and a "sufficient number of police," Superintendent AW Duffus, Commander of the RCMP in western Ontario, searched approximately nineteen houses on the Grand River Reserve where illicit liquor production was allegedly taking place.[47] Capitalizing on the momentum of this "assertion of authority" in which arrests and seizures were made, the RCMP established their detachment at the administrative centre of the reserve, Ohsweken.[48]

Contemporaneously, as they imprinted state law enforcement on the reserve through the construction of the RCMP detachment, Indian Affairs sought to impress their vision of state governance structure on the geography of Ohsweken. The Six Nations at Ohsweken had, from "time immemorial," selected chiefs and councillors using a hereditary system in which women held the voting power.[49] The Department of Indian Affairs considered this "obsolete... wholly unsuited to modern conditions of life and detrimental to progress and advancement."[50] A Royal Commission was appointed to investigate the Six Nations in 1923.[51] On the advice of the Royal Commission, the authority of the *Indian Act*, and with the authorization of a 1924 Order in Council, the DIA concluded that they had effectively dismissed the Six Nations electoral structure.[52] In its place, Indian Affairs imposed a system under which the Six Nations would "have a measure of local autonomy largely corresponding to that of a rural municipality but subject to the supervision" of the Department of Indian Affairs.[53] Despite the efforts of the colonizing state, the Six Nations continue their sophisticated indigenous system of governance. By 1925, the Department of Indian Affairs had also built quarters for the Ohsweken RCMP detachment.[54]

8.1.2 Police and Legal Counsel for Wards of the State

In addition to the discriminatory measures inherent in a legislative framework of wardship that imposed summary conviction for offences involving intoxicants, the Department of Indian Affairs had procedures for how to manage cases that lay beyond the *Indian Act*. Although

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[46] Some of the warrants dated from 1918. *Report of the Royal Canadian Mounted Police*, 1923, Op. Cit.:20.
[47] Ibid.
[48] Ibid.
[49] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1924,* (Ottawa: FA Acland, 1925): 11.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] *Report of the Royal Canadian Mounted Police*, 1925, Op. Cit.:33.

Indian Affairs did pursue a policy of hiring of defense counsel for "Indians" accused of the serious crime of murder, conversely, they usually did not hire representation for other offenses even when these offences were far from "minor." The hiring of defense counsel in murder cases was one device by which colonizing governments were able to claim that "Indians" were not discriminated against in criminal law.

In the differing circumstances of Indian Affairs in British Columbia, where title and cession through treaty were not generally recognized and policies of greater contact between indigenous peoples and settlers were often applied, Lieutenant Governor Joseph Trutch argued that "declared policy has been that the Aborigines should, in all material respects, be on the same footing in the eye of the law as people of European descent."[55] When "Indians" were accused of shooting and killing other "Indians" in the vicinity of Victoria, defense council was assigned through the presiding judge, convictions occurred, and sentences of hanging were meted out.[56] Trutch saw this as fair access to defence counsel since "a poor Indian is no worse off than a poor White man, indeed, he is probably not so friendless, as the judges in this colony have always made it their special care, that Indians on trial should be at least at no disadvantage on account of their being Indians."[57] Trutch claimed that Magistrates were the "especially constituted protectors of the Indians against injustice."[58] In the 1875 administrative context of British Columbia where Indian Commissioners, not Superintendents and Indian Agents, corresponded with Indian Affairs, Lieutenant Governor Trutch viewed Magistrates as "'Indian Agents,' in all but the name" and expressed confidence in this "well-understood branch of their duty, that as full a measure of protection and general advantage has been bestowed on the Indians through their agency" by the government.[59]

Paradoxically, the paternalistic approach of colonizing governments legislated discriminatory standards of lawful behaviour for indigenous persons while leaving them exposed to prosecution within court systems. In 1898 Restigouche, newly-stationed Jeremie Pitre had not yet been appointed to the DIA through an Order in Council and thus was not yet an Indian Agent Justice of the Peace.[60] He was instructed that, in the meantime, he could lay information based on

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[55] Lieutenant-Governor Joseph Trutch, *Annual Report of the Department of the Interior for the Year Ended 30th June, 1875,* (Ottawa; Maclean, Roger & Co, 1876): lvi.
[56] Ibid.
[57] Ibid.
[58] Ibid:lvii.
[59] Ibid.
[60] Secretary of the DIA JD McLean to Acting Indian Agent Jeremie Pitre, 9 April 1898, (Ottawa), "Restigouche Reserve," Op. Cit.

offences against the *Indian Act* or other statutes; however, if he had been considering the "engaging of counsel – the Department has to point out that this can only be done after having in each case shown it the absolute necessity for professional assistance."[61] Only the more senior officials at Indian Affairs could properly assess the need and provide the authority to engage defense counsel.[62]

Lawyers objected to the Department of Indian Affairs' failure to provide legal defense counsel in serious cases. In 1937, a twenty-year old "Indian boy" from a Saskatchewan reserve was arrested on a charge of "having carnal knowledge" of two underage girls.[63] At the Police Station where he was taken upon arrest, the accused lacked legal counsel when he was asked to state if he had "intercourse with these girls… replied that he had, and was told by the interpreter that he had broken the law, and that the Magistrate had sentenced him to three years on each charge, the charges to run concurrently."[64] Reserve members requested the assistance of lawyer CS Davis who, in turn, brought a "capable interpreter" when he visited the imprisoned individual in the penitentiary.[65] Davis learned that the interpreter at the police station spoke a different type of Cree and that the accused individual did not entirely understand him and certainly was unaware of how to defend himself.[66] Davis was endeavoring to secure a new trial through the Department of Justice and, since the individual in question and his parents did not have the financial means, wondered if the DIA might advance him part of his fees.[67] Whatever their answer, Davis asserted, an "obvious injury has been done" and he intended to see it "righted," even if he had to pay for it himself.[68]

Secretary of the DIA TRL MacInnes explained to the Department of Justice that he was "not aware of any statutory authority that would authorize such payment except the general responsibility of the Department for Indian protection and welfare" and Indian Affairs did "not propose to defend in the present case" because it was

> not the policy of this Department to defend Indians for any crime lower than murder, although, rarely, exception is made in the case of rape, that being a capital offence, and in certain cases where constitutional issues affecting the jurisdiction and administrative

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[61] McLean to Pitre, 9 April 1898, (Ottawa), "Restigouche Reserve," Op. Cit.
[62] Ibid.
[63] CS Davis of Davis and Davis Barristers, Solicitors, and Notaries to the Department of Indian Affairs, 16 October 1937, (Prince Albert), RG10: Department of Indian Affairs, "Dept. of Justice Opinions – Vol. 4," 1911-1938, Series B-8, Volume: 11195, File: 3, Access Code: 32.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Ibid.

> authority of the Department entered as where Indian treaties or provisions of the Indian Act are challenged.[69]

The Department of Justice had no objections to the DIA hiring legal counsel in capital cases involving "Indian" defendants "provided the Indian is unable to conduct his own defence" and there was money available.[70] Ten thousand dollars was allocated to legal fees for the fiscal year 1937-38 in Administrative Allotment Vote 169 and the DIA retained seventy-five hundred dollars on the date of correspondence.[71] The Department of Justice did not see any authority whatsoever that would allow Indian Affairs to provide defense in other criminal or civil cases.[72]

8.2 British Origins of Town Lock-ups

The principles behind the operation of town or village lock-ups have their basis in British law. The 1847 *Act to establish Lock-up Houses in the unincorporated Towns and Villages of Canada West* preceded Canadian Confederation.[73] In order to facilitate the "more effectual punishment of disorderly persons, and other offenders," complements to District Jails were required.[74] By grant or purchase, District Councils were given the right to acquire land for the establishment of a lock-up in any unincorporated town or village a minimum of ten miles from the district seat of judicial authority that met the requirement of possessing at least one hundred adult inhabitants.[75] By petition of two-thirds of the "inhabitant householders" of the town or village, the District Council could authorize a payment of up to £200 for the immediate construction of a lock-up under the direction of two resident, or nearby, Justices of the Peace.[76] Resident constables, appointed by the District Magistrates in the General Quarter Sessions, acted as jailkeepers.[77]

Any Justice of the Peace who lived close to the lock-up, or closer to the lock-up than to the district town, could make written orders of confinement of any person charged with a criminal

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[69] Secretary TRL MacInnes to Deputy Minister of Justice W Stuart Edwards, 23 November 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 4," Op. Cit.
[70] Deputy Minister of Justice W Stuart Edwards to the Secretary of the Indian Affairs Branch, 30 November 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 4," Op. Cit.
[71] Ibid.
[72] Deputy Minister of Justice W Stuart Edwards to the Secretary of the Indian Affairs Branch, 8 December 1937, (Ottawa), "Dept. of Justice Opinions – Vol. 4," Op. Cit.
[73] *An Act to establish Lock-up-Houses in the unincorporated Towns and Villages of Canada West*, 1847, 10 and 11 Victoria, c. 41.
[74] Ibid:c. 41, s. 1.
[75] Ibid:s. 1, 2, 3.
[76] The Justices of the Peace were to be within three miles of the town or village. Ibid:s. 2.
[77] Ibid:s. 3.

offence so that they could be held for up to two days until the case was examined and either dismissed or committed for trial.[78] Persons committed for trial were to be sent to the common gaol; however, they could be retained in the lock-up prior to transfer.[79] The resident Justice of the Peace could also apply this power to send "all persons found in the streets or highways in a state of intoxication, or convicted of unlawfully desecrating the Sabbath, and generally all persons convicted, on view of such Justice of the Peace, or on the oath of one or more credible witnesses, of any offence cognizant by law" for up to twenty-four hours.[80] The expense of establishing the lock-up house could be met through a special assessment yet the costs of maintaining the lock-up, conveying prisoners, and keeping prisoners were to be paid as District costs for the administration of justice as it would be for the common gaol.[81] In keeping with the 1850 *Corporations Amendment Act*, the condition was added that persons summarily convicted by magistrates could be committed to the proximate lock-up instead of to the common gaol.[82]

The 1867 *British North America Act* placed important areas of law-making under the exclusive jurisdiction of provincial legislatures.[83] Although "Indians" themselves were federal wards, critical aspects of their experiences of state law were included in these provincial legislative spheres. Provincial legislatures could create laws regarding the "Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province," municipal institutions, "Shop, Saloon, Tavern, Auctioneer, and other Licences," the "Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts," and the "Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province" related to this section of the act.[84] While these legislative powers included common gaols and "Generally all Matters of a merely local or private Nature in the Province," the centralized federal operations of Indian Affairs transversed

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[78] *An Act to establish Lock-up-Houses,* Op. Cit.:c. 41, s. 5.
[79] Ibid.
[80] Ibid.
[81] Ibid:c. 41, s. 4, 6.
[82] *An Act to provide for the summary punishment of petty trespasses and other offences* was an act of Parliament in Upper Canada in the fourth year of the reign of King Henry the fourth. 1850 *Corporations Amendment Act*, 13 and 14 Victoria, Cap. 64, s. 10. Keele, 1851, Op. Cit.:688; Hugh Scobie, *Scobie's Municipal Manual for Upper Canada*, 2nd edition with supplement, (Toronto: Hugh Scobie, 1851):7-8.
[83] *Constitution Act*, 1867, 30 and 31 Victoria, c. 3, s. 92.
[84] Ibid, s. 92, ss. 6, 8, 9, 14, 15.

the boundaries of Canadian Confederation.[85] Beyond the exceptional prohibitions of the *Indian Act*, Indian Agents balanced judicial functions that teetered between provincial and federal realms as they enforced Indian Affairs' assimilationist programs and incarcerated "Indians" in lock-ups.

8.3 Lock-ups and the Department of Indian Affairs

Concurrent with solidification of state control in late nineteenth century Canada, Indian Affairs was thoroughly involved in the establishment of small "lock-up" jails for the incarceration of Indian wards of the state. Lock-ups were built on Indian lands and Indian Reserves across Canada. Rather than being a response to any increase in offences of the criminal laws meant to apply indiscriminately to all, the impetus for lock-up construction appears to be linked to assimilative criminalizing restrictions imposed on indigenous peoples. In 1873, Deputy Superintendent General William Spragge described that, aside from areas where indigenous peoples were "exposed to injurious influences, owing to their proximity to towns," and laws against the liquor trade with indigenous persons were not upheld, Indian wards appeared to be increasingly "conscious of their responsibilities as members of society, decidedly orderly in their conduct, more industrious in their habits, and less addicted to crime."[86] In regard to the "commission of crime," Spragge estimated that there were "probably… fewer instances… than among an equal number of persons who are not of Indian blood."[87] As part of the assimilative program of geographic restriction, "lock-ups" were established for the purposes of instilling obedience to state power in indigenous peoples.

Lock-ups were "built on a number of Indian Reserves varying a little in size."[88]As the centralized DIA administered the establishment of these lock-ups, they endeavored to maintain economy and suit the carceral facilities to their assimilationist needs on particular reserves. The lock-up on the Chippewas of Nawash reserve was built by Gilpin and Barker with one hundred sixty dollars from the band's capital fund.[89] A stone lock-up built by George Baker on the

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[85] *Constitution Act*, 1867, 30 and 31 Victoria, c. 3, s. 92, ss. 16; Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868,* (Toronto: Hunter, Rose & Co., 1869):1.

[86] Department of the Minister of the Interior, *Report of the Indian Branch of the Department of the Minister of the Interior for the Year Ended 30th June 1873,* (Ottawa: IB Taylor, 1874):6.

[87] Ibid.

[88] Secretary of Indian Affairs to Port Arthur Indian Agent Neil McDougall, 10 May 1907, (Ottawa), "Port Arthur Agency – Jails Within the Agency," 1907-1928, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 492-4-12, Access Code: 90.

[89] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December 1884*, Part II, (Ottawa: Maclean, Roger & Co., 1885):17.

Saugeen Reserve cost a great deal more at $719.07.[90] The cement lock-up built on the reserve of the Chippewas of Rama was completed for $994.75.[91] According to Indian Agent Irwin, the "Indians" of Kamloops, BC, constructed a lock-up in their village to be overseen by an "Indian constable."[92] Kincolith, the Nass Valley Nisga'a village, also had a lock-up within the Indian village as did the Metlakahtla Indian Mission.[93] On the east coast of Canada, the Burnt Church, Eel Ground, and Big Cove Bands, possessed reserve lock-ups.[94] When the Red Bank, New Brunswick, reserve lock-up was built, Indian Agent Irving pronounced it the "nicest building of this kind in the agency."[95] The Department of Indian Affairs gave a contract to Messrs. Constantin and O'Brien to build lockup facilities at Caughnawaga, Québec, with lattice flat steel bar cells.[96]

The members of the Fort William, Ontario, Band Council assembled in March 1907 and approved a motion to request that the DIA withdraw three hundred dollars from their capital account for the purposes of building a cell, or "small room" for use as a lock-up, in both the Mountain and Mission Bay council houses.[97] Since these lock-ups were "in the nature of permanent improvements," they could be funded out of the band's account under Section 90 of the *Indian Act*.[98] The Grand Trunk Pacific Railway Company had acquired a right of way through the southern part of the reserve, causing the band to split and move to two separate parts of the reserve, and the agency now required two new lock-ups because it was impossible to take

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[90] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1899*, Part G, (Ottawa: SE Dawson, 1900):76.
[91] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1915*, Part II, (Ottawa: J de L Taché, 1916): xxvi, 84.
[92] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1901*, (Ottawa: SE Dawson, 1902):250.
[93] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1902*, (Ottawa: SE Dawson, 1903):259. Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1879*, (Ottawa: Maclean, Roger & Co., 1880):118.
[94] *Annual Report of the DIA*, 1902, Op. Cit.:61; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, (Ottawa: SE Dawson, 1905):62.
[95] *Annual Report of the DIA*, 1911, Op. Cit.:63.
[96] *Annual Report of the DIA*, 1885, Op. Cit.:69; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1914*, Part H, (Ottawa: J de L Taché, 1915):105; Assistant Deputy and Secretary of Indian Affairs J D McLean to Messrs. Constantin & O'Brien, 15 August 1916, (Ottawa), "Manitoulin Island Agency – Jail Facilities on Manitoulin Island," 1878-1952, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12.
[97] The Chief Surveyor recommended to the Deputy Minister that a sum $50 higher be released for the purpose. Indian Agent to Secretary of the Department of Indian Affairs, 29 March 1907, (Port Arthur), "Port Arthur Agency – Jails," Op. Cit.; Chief Surveyor's Memorandum for Deputy Minister, 12 April 1907, "Port Arthur Agency – Jails," Op. Cit.
[98] Superintendent General of Indian Affairs to His Excellency the Governor General in Council, 15 April 1907, (Ottawa), "Port Arthur Agency – Jails," Op. Cit.

prisoners to the existing Fort William Lock-up if an arrest was made at night or at another inconvenient time.[99] The council house lock-ups remained overnight cells secondary to the main Fort William Lock-up.[100] DIA lock-ups were a method of underscoring state presence on reserves: its supposedly temporary geographical outposts of assimilative pre-enfranchisement.

8.3.1 Lock-ups: Resistance and State Presence in Geographical Outposts

The DIA realized, and trumpeted, the deterrent assimilative effects of lock-ups; however, they did not have the effect of eliminating "Indian" identities from Canada. Rather, the lock-ups themselves, as well as the legislative and judicial powers that perpetuated their function, were a beguiling tool that was difficult to dispense with. When the lock-up on the eastern Ojibwas of Lake Superior reserve was first erected, it remained empty because they were "as a rule orderly" and had a "great dislike to the jail."[101] In 1876, Visiting Superintendent William Fisher asserted that, with lock-ups at Little Falls and Tobique, there was "no cause in these places now for the non-imprisonment of those Indians who seem determined, at all hazards, to violate the law" regarding liquor.[102] The Micmac of Maria, Québec, were thought to make material and moral progress during 1884 due to preventative measures to repress the liquor trade "among which may be mentioned the establishment on the reserve of a small lock-up, to confine Indians when intoxicated."[103] Twenty years later, J Gagne, Priest and Indian Agent, still found a "powerful hindrance" in the lock-up located in the centre of the reserve.[104]

Since most of the DIA lock-ups had to be built cheaply in relatively remote locations, they relied on the use of "Indian labour." The reliance on future inmates to construct the jails in which they would be held afforded opportunities for resistance. In 1894, the Indian Agent of the Garden River Band on the north shore of Lake Huron complained that the "Indians were to have built a lock-up to put the liquor offender in, but as yet I have not succeeded in getting them to get

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[99] Indian Agent to Secretary of the Department of Indian Affairs, 29 March 1907, (Port Arthur), "Port Arthur Agency – Jails," Op. Cit.; Superintendent General of Indian Affairs to His Excellency the Governor General in Council, 15 April 1907, (Ottawa), "Port Arthur Agency – Jails," Op. Cit.

[100] Indian Agent N McDougall to the Secretary of the Department of Indian Affairs, 29 December 1909, (Port Arthur), "Port Arthur Agency – Jails," Op. Cit.

[101] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1896*, (Ottawa: SE Dawson, 1897):17.

[102] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1876*, (Ottawa: Maclean, Roger & Co., 1877):31.

[103] *Annual Report of the DIA*, 1884, Op. Cit.:xxv, 32-33.

[104] *Annual Report of the DIA*, 1904, Op. Cit.:49; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended June 30th 1905*, (Ottawa: SE Dawson, 1906):45.

out the necessary timber for the purpose" even though the "fine looking" new Council Hall had been constructed and was already in use.[105]

8.3.2 St. Regis Lock-up

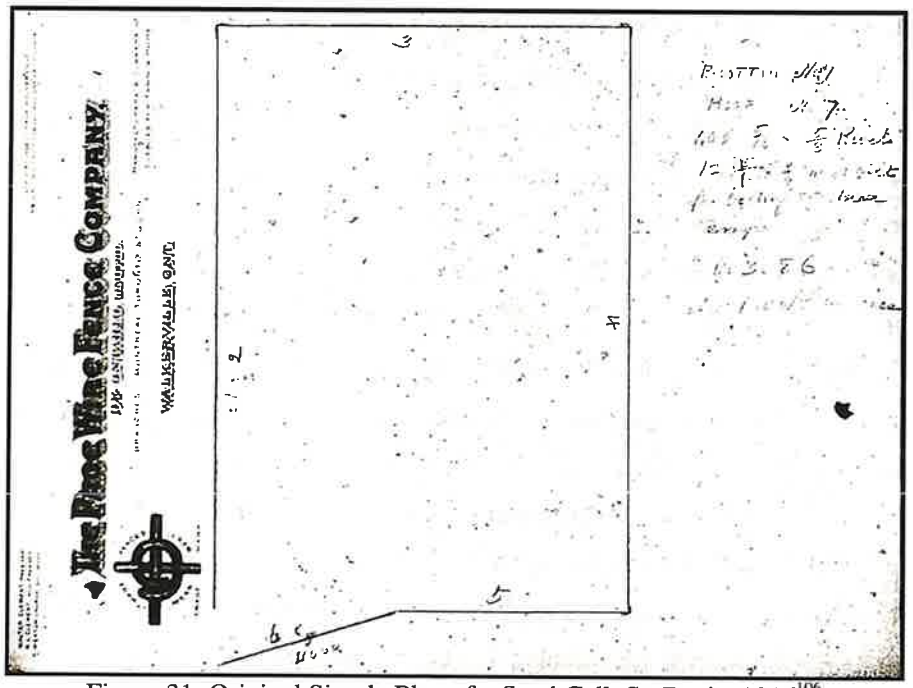

Figure 31: Original Simple Plan of a Steel Cell, St. Regis, 1916[106]
The plan drawn up prior to construction was simply a rough sketch of a box with jotted measurements.

The lock-up on the St. Regis Reserve was the site of complex opposition despite predictions that it would "place a certain awe over" reserve inhabitants and "have a peaceable effect upon many."[107] In 1916, Indian Agent FE Taillon posited the reserve's isolation and the difficulties of transporting prisoners as reasons to build a jail "or at least a steel cage" in the building where the Band Council met according to *Indian Act* procedures for reserve governance

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[105] By 1898, the Garden River lock-up was also in use. *Annual Report of the DIA,* 1898, Op. Cit.:15; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1894,* (Ottawa: SE Dawson, 1895):10.
[106] Adapted from Page Wire Fence Co., Memorandum and Sketch Plan of St. Regis Reserve Lock-up, 3 November 1916, (Walkerville, Ontario), "St. Regis Agency – Agency Buildings – St. Regis Lock-up (Plan)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12, Access Code: 90.
[107] Indian Agent to JD McLean, 10 January 1916, (St. Regis), "St. Regis Lock-up," Op. Cit.

and St. Regis children attended school.[108] The three manifestations of state law would thus share physical and conceptual space in the assimilative program. Perhaps fittingly, although the issue had not yet been brought before the Band Council, and the legally-required procedural step of securing a resolution had not yet occurred, the DIA was quite willing to allow a steel jail cell to be built using the band's Capital Fund.[109] On 7 August 1916, at a Regular Meeting of the Indian Council, the St. Regis Band approved the funds for a "a steel cage, to be placed in the council house in order that we may have a place to lock up any of our members who may break the laws," by a vote of five in favour and two opposed.[110]

Despite Taillon's reverie of band leaders' agreement with the law-and-order agenda, certain members of the St. Regis band conveyed their disquiet with the new jail and used it as a rallying point around which to challenge the paternalistic imposition of state law. One St. Regis individual broached a concern for maintaining band rights to reserve lands when he told the Dominion Government,

> I want you to pay attention to this Francis Taillon for not doing right by the Indians. He puts a policeman on the Reservation and pays him a salary from the Indian's money. In the fall of 1916 we did not draw any money. A party of six men in St. Regis got the money and bought a cage to shut the Indians up in. Four of the party are full breed French Canadians. One out of the party of Six is buying land here which he has no right to do on the Reservation. His name is not recorded on the Records.[111]

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[108] Part of the problem of prisoner transport related to the geography of the Canada-US border. The Indian Agent gave the example that if "a person is arrested either in the Spring or Fall, not having a suitable place here... the route must of necessity be in Canada" through "precarious and at times extremely dangerous" land and water because it was "quite impossible to take the prisoner through the U. S. as he would...be out of our jurisdiction." Ibid; [Name withheld] to Superintendent of Indian Affairs, 15 June 1917, (Iroquois), "St. Regis Lock-up," Op. Cit.

[109] The projected cost of the steel cell was $225. Assistant Deputy and Secretary of Indian Affairs to Indian Agent FE Taillon, 21 January 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.

[110] The quote for a single cell from the Page Wire Fence Company was $160. The cost was approved according to Section 90 of the 1906 *Indian Act* which preferred consent of expenditures from band funds yet allowed, in the "event of a band refusing to consent to the expenditure of such capital moneys as the Superintendent General may consider advisable... and it appearing to the Superintendent General that such refusal is detrimental to the progress or welfare of the band, the Governor in Council may, without the consent of the band, authorize and direct the expenditure." *An Act Respecting Indians*, Dominion of Canada, 1906, c. 81, s. 90; Superintendent General of Indian Affairs to His Royal Highness the Governor General in Council, 13 September 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.; Page Wire Fence Co., Memorandum and Sketch Plan of St. Regis Reserve Lock-up, 3 November 1916, (Walkerville, Ontario), "St. Regis Lock-up," Op. Cit.; Clerk of the Privy Council to the Superintendent of Indian Affairs, "Certified Copy of a Report of the Committee of the Privy Council approved by His Royal Highness the Governor General on the," Date illegible, (Ottawa), "St. Regis Lock-up," Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to the Page Wire Fence Co., 2 October 1916, (Ottawa), "St. Regis Lock-up," Op. Cit.

[111] [Name withheld] to Dominion Government, 12 June 1919, (St. Regis), "St. Regis Lock-up," Op. Cit.

Another band member protested to the Superintendent of Indian Affairs that Taillon had "established a lock up in the school house" and would "not tell where he got the money to pay for" the steel jail cell.[112]

The resistance of St. Regis band members extended to vandalizing the building that housed the lock-up, school, and meetings of the Band Council. After damage to the lock-up windows was repaired and the new window frames were "taken by unknown parties," Taillon purchased supplies for heavy shutters that could be bolted on the inside.[113]

The use of the St. Regis lock-up cage was such that a larger replacement building soon seemed advisable. The pervasive control exercised by Indian Affairs over their wards extended beyond constructing a jail building for use in the application and enforcement of Canadian laws. Criminal law enforcement officers actively worked with the DIA and shared documents and details of cases involving Indians wards. In 1928, at the request of Indian Affairs, the RCMP sent an officer to St. Regis to investigate traffic in intoxicants.[114] Detective Constable TS Moore thought it unnecessarily difficult to incarcerate those arrested on the St. Regis reserve. Moore illustrated,

> it is necessary for one man to watch the prisoner, as we have no suitable place to lock them up; and the other man then can do very little alone, as while he is searching one place the Indians are free to hide or destroy any liquor which might be concealed in some other part of the premises. There is a good iron cage to lock the prisoners in… The windows of this building are boarded up as the glass has all been broken; and when it rains the roof leaks and we cannot put a prisoner in it. It is also situated too far away from the Indian Agent's office; and when a prisoner is locked up it is necessary for a man to remain and watch the place in case of fire, or to prevent any person from breaking the lock and letting the prisoner free. In cold weather the place is useless, as you cannot put a prisoner in a place where there are no windows... At the present time we have to keep the prisoners in the Indian Agent's office; and if a prisoner is intoxicated to any extent he generally leaves an unpleasant condition behind him, which is not very desirable in a public place.[115]

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[112] [Name withheld] to Superintendent of Indian Affairs, 15 June 1917, (Iroquois, Ontario), "St. Regis Lock-up," Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to [Name withheld], 21 June 1917, "St. Regis Lock-up," Op. Cit.; [Names withheld] to The Dominion Government, 4 November 1919, (St. Regis), "St. Regis Lock-up," Op. Cit.

[113] Smith Hardware Company Invoice to FE Taillon, 28 June 1922. Indian Trust Fund Voucher to Smith Hardware Company, 20 November 1922, Certified by Agent FE Taillon. FE Taillon to Secretary of Indian Affairs JD McLean, 20 November 1922, (St. Regis), "St. Regis Lock-up," Op. Cit.; Assistant Deputy and Secretary of Indian Affairs JD McLean to Indian Agent Taillon, 27 November 1922, (Ottawa), "St. Regis Lock-up," Op. Cit.

[114] Commissioner of the Royal Canadian Mounted Police Cortlandt Starnes to the Deputy Superintendent General of Indian Affairs, 6 June 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.

[115] One St. Regis band member was arrested on 15 June at 11:30 pm and was held until 6:00 pm on the following day, when he achieved sobriety and it was deemed possible to release him. Detective Constable TS Moore of the Royal Canadian Mounted Police to the Officer Commanding "A" Division of the RCMP forwarded to the Department of Indian Affairs, 23rd June 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.

In response to the notification that it was "quite essential" that a more robust lock-up be built at St. Regis, the DIA began a new building process.[116] The new lock-up built on the St. Regis Reserve in 1928 was designed by the Department of Indian Affairs' own architectural and engineering service.

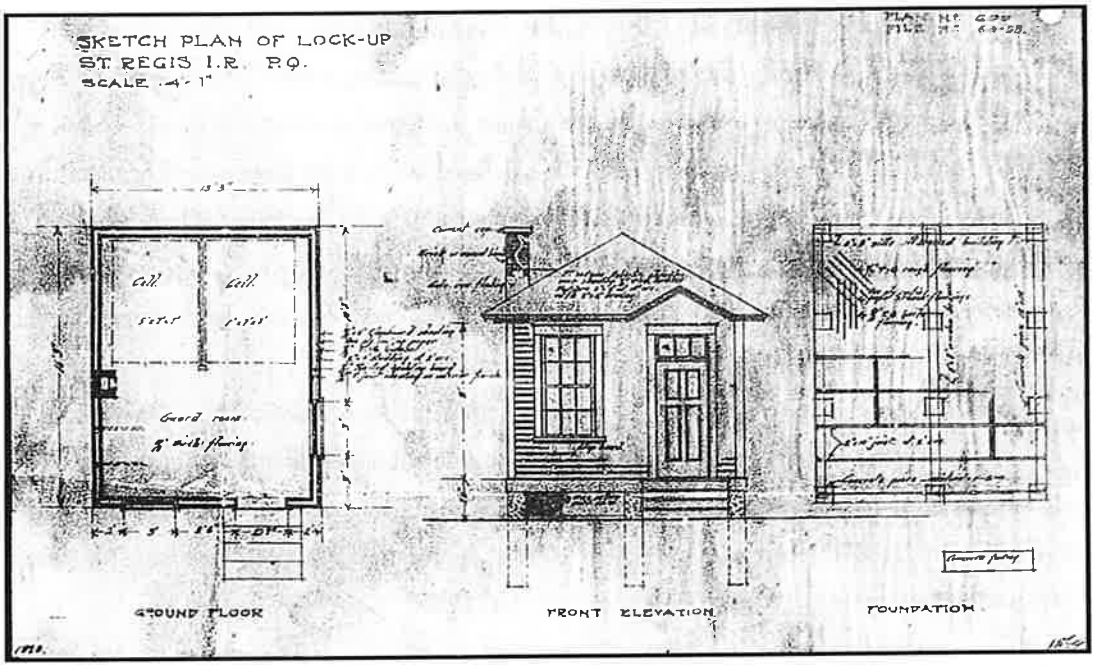

Figure 32: 1928 Plan of St. Regis Lock-up Provided by the Department of Indian Affairs[117]

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[116] Initially, St. Regis Indian Agent MacGibbon suggested having the lock-up built on the grounds of the Indian Agent's house rather than on the existing schoolhouse and lock-up site because he found the distance between the two inconvenient; however, he had second thoughts for "certain reasons" and the decision was made to use the original site. The accountant of the DIA suggested that half of the cost of the jail be charged to the Band's interest funds and half to a DIA account, since the expenditure was not expected and, thus, not provided for. MacGibbon recommended that the carpentry job of constructing the building should be given to an "Indian carpenter" from St. Regis Village. However, the Acting Deputy Superintendent General of Indian Affairs gave the job to a man in Cornwall named Oliver Hammond. Memorandum of the Accountant of the Department of Indian Affairs Mackenzie and note in response, 3rd July 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.; St. Regis Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 17 July 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.; Acting Deputy Superintendent of Indian Affairs to Mr. Chene, 20 September 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.; Indian Agent WA MacGibbon to Secretary of Indian Affairs, 22 October 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.; Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 14 July 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.; Indian Agent WA MacGibbon to the Secretary of the Department of Indian Affairs, 19 July 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.

[117] As "sr. asst. eng.," JD Chene, a permanent employee of the DIA, was requested to provide this plan. Adapted from "Sketch Plan of Lock-up St. Regis I.R. PQ," 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.; AF MacKenzie to Mr. Chene, Memorandum, 20 July 1928, (Ottawa) "St. Regis Lock-up," Op. Cit.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1929*, Part I, (Ottawa: FA Acland, 1930):3.

Despite language differences, three "head men" representing a "considerable minority" on the St. Regis Reserve appreciated the power of a solicitor in the Canadian legal system and brought an interpreter with them when they consulted Cornwall solicitor George A Stiles about the new lock-up in October 1928.[118] The men asked Stiles to represent them in their "application for information" to determine why a "Guard House" was being built, who approved its construction, and where the funds to pay for it were coming from.[119] Although Stiles did "not sympathise very much with the attitude of some of the members of this Band," he felt that they had been influenced by agitators from the USA and advised the Department of Indian Affairs that it might generate a better sentiment if it approached the men in a spirit of conciliation.[120] The DIA informed Stiles that the men were known as part of "an element which is in some degree opposed to constituted authority" and asserted that the establishment of a new lock-up was "in the interests of the maintenance of law and order" on a reserve that lacked a viable place of incarceration for the many arrests that were being made due to cross-border liquor traffic.[121] On his part, Stiles assured Indian Affairs that he maintained communication with the dissenting group and "endeavored from time to time" to assist those who consulted him to "see the matters in a different light."[122] Regardless of Stiles' efforts, opposition to the lock-up on the St. Regis reserve did not dissipate.

Shortly thereafter, the RCMP were also called upon to intervene in the resistance. They earned the gratitude of Deputy Superintendent General Duncan Campbell Scott when they sent officers to address a small faction of band members who were frustrating the progress of the contractors constructing the lock-up.[123] Negotiating between the band members and Indian Affairs, the RCMP requested that the building materials in the old schoolhouse be given to any band member who wished to take on the task of demolishing it.[124] The gesture, which might have

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[118] Barrister, Solicitor, and Notary George A Stiles to the Superintendent General of Indian Affairs, 6 October 1928, (Cornwall), "St. Regis Lock-up," Op. Cit.
[119] The men planned to return to Stiles' office with their interpreter on the following week in order to find out what Stiles had learned about the proposed building. Stiles to the Superintendent General of Indian Affairs, 1928, "St. Regis Lock-up," Op. Cit.
[120] Ibid.
[121] Department of Indian Affairs to Barrister, Solicitor, and Notary George A Stiles, 8 October 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.
[122] Barrister, Solicitor, and Notary George A Stiles to Deputy Superintendent General of Indian Affairs Duncan Campbell Scott, 10 October 1928, (Cornwall), "St. Regis Lock-up," Op. Cit.
[123] Deputy Superintendent General of Indian Affairs Duncan Campbell Scott to Assistant Commissioner of the Royal Canadian Mounted Police Lt.-Col. AW Duffus, 15 October 1928, (Ottawa), "St. Regis Lock-up," Op. Cit.
[124] Assistant Superintendent General of Indian Affairs to Indian Agent WA McGibbon, 17 October 1928,

been mutually beneficial, did not put an end to St. Regis resistance to the lock-up and tensions continued to rise. In response to Indian Agent MacGibbon's claim that a group of band members approached the contractor at home and "threatened that if he came over to St. Regis to build the jail they would shoot him," the RCMP formed a guard detail of three uniformed men to protect the lock-up and those constructing it.[125]

From that point, the construction work went on with RCMP supervision.[126] Several St. Regis workmen were employed on the building site and the construction supplies were transported from Cornwall on a scow owned by a band member.[127] MacGibbon and the contractor eventually suggested that the three RCMP officers could return to their regular duties.[128] When, in due course, the bulk of the building was completed, the band members who had been working on the building were laid off even though finishing work remained to be done.[129] MacGibbon recommended that a St. Regis carpenter be commissioned to build an outhouse approximately forty feet behind the lock-up and suggested that the lock-up be provided with the basic comforts of a small cot, quilts, a small table, and two or three chairs; however, these luxuries were not for the prisoners.[130] These small comforts were for the benefit of the guards "so when the cell is in use, especially at night time, the officer in charge, would have a place to rest, rather than be obliged to rest on the floor" as the prisoners did.[131]

8.4 Peroratio: Assimilation Through Incarceration

Although shallow sketches of the historical relationships between criminal law and indigenous peoples may assume that, as with settlers, laws were enforced through policing, judicial decisions, and correctional measures such as local lock-ups, this chapter reveals that the

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(Ottawa), "St. Regis Lock-up," Op. Cit.

[125] The contractor refused to work on the jail without RCMP protection. Report of RCMP Det. S/Sergt. CA Ramsey of Regt. No. 9055 to the Commanding Officer of the RCMP "A" Division forwarded to Department of Indian Affairs, 23 October 1928, (St. Regis and Ottawa), "St. Regis Lock-up," Op. Cit.

[126] Ibid.

[127] Ibid.

[128] Ibid.

[129] One band member who had worked for 54 hours that week, was paid $0.30 an hour for his efforts, despite his agreement, confirmed by the contractor, that he would be paid $0.50 an hour. Indian Agent WA MacGibbon to Secretary of Indian Affairs, 29 October 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.; Indian Agent WA MacGibbon to Secretary of Indian Affairs, 5 November 1928, (St. Regis), "St. Regis Lock-up," Op. Cit.

[130] Indian Agent WA MacGibbon to Secretary of Indian Affairs, 27 May 1929, (St. Regis), "St. Regis Lock-up," Op. Cit.

[131] Ibid.

functions of these seemingly equal forces of state law were quite differently applied to indigenous peoples. In large part, the disproportionate application of punitive measures occurred because, for persons and places identified as "Indian," policing, judicial functions, and correctional facilities were subject to the assimilative control of Indian Affairs. The Department of Indian Affairs spearheaded the establishment of lock-ups throughout the Dominion of Canada using "Indian" lands and band funds. Incarceration was not a measure of restoring errant individuals to the law: it was a method of asserting state law over indigenous legal ontologies. The depth and breadth of Indian Affairs' use of incarceration as a tool of assimilative social control is exemplified in the geographical particularities of Manitoulin Island.

Chapter 9

Manitoulin Island Lock-ups: Place, Legal Dominion, and Indian Affairs

For those with an interest in historical carceral facilities, as affirmed by Ron Brown's *Behind Bars: Inside Ontario's Heritage Gaols*, if any place could possibly "boast of its preserved lock-ups," Manitoulin Island can.[1] The Gore Bay Museum is indeed noteworthy, the Assiginack Museum Lock-up educational, the defunct Little Current Lock-up promising, and the Providence Bay Lock-up cottage enterprising. At first glance, these small Manitoulin Island jails appear to be interesting examples of the standard utilities of provincial settler communities. Nevertheless, Indian Affairs' contributions to carceral facilities preceded the 1878 construction of the provincial Manitoulin Island lock-ups.

The persistent idea of Manitoulin Island as a place for bringing "Indians" under state law through assimilation originated much earlier in the century. In the year following the death of William Gibbard, Customs Inspector CE Anderson offered a dim view of the "miserable" fire-ravaged settlement of Little Current.[2] Anderson observed that six or seven years before, Little Current had a Hudson's Bay Company station with a wharf and storehouse.[3] HBC employed "Indians and Half-breeds" in cutting cordwood until the company lease ran out on their twenty-year, twenty-acre, station and the DIA "deemed it wise that the Company should leave the Island."[4] In consequence, the wharf fell into decay and these workers had "fallen back to… fishing and hunting habits."[5] The schoolmaster complained "very bitterly" of "Indians" receiving liquor from passing trading vessels and steamers.[6] Anderson recommended Little Current, where excluding the schoolmaster and the storekeeper, the population was "all Indian and Half-breeds," as a good optional location for a lock-up.[7]

Although it is not certain where this temporary lock-up was located, from its administrative centre in Manitowaning, Indian Affairs financially supported the construction of a lock-up before the formal creation of the Manitoulin Island Lock-ups through the Ontario

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[1] Ron Brown, *Behind Bars: Inside Ontario's Heritage Gaols*, (Canada: Hignell Book Printing, 2006):90-91
[2] CE Anderson, "Report on the Free Port of Sault Ste. Marie," October 1864, *Reports of the Inspectors of the Free Ports of Gaspe and Sault Ste. Marie, Together with Certain Statistical Tables of Imports*, Sessional Papers of the Province of Canada, (Québec: Hunter, Rose & Co., 1865):39.
[3] Ibid:39-40.
[4] Ibid.
[5] Ibid.
[6] Ibid:39.
[7] Ibid:39-41.

Department of Public Works.[8] In 1875, in the 1st Division of the Northern Superintendency served by JC Phipps, eighty dollars was paid by Indian Affairs to the Lockup Superintendent for building repairs or construction.[9] The closest lock-up recognized in Province of Ontario Sessional Papers at this time was in Parry Sound.[10] However, Parry Sound, the 3rd Division of the Northern Superintendency served by Visiting Superintendent C Skene, although appearing in a lower section on the same accounting spreadsheet, was not the location of this payment.[11]

Brown attributes the motivation for constructing the Manitowaning Jail to population growth in the town and Manitoulin Island meriting district status.[12] The survey, sale, and settlement of Manitoulin Island was gaining momentum as demand for "excellent" Indian lands had been higher in the year in which the lock-up was built than it had been in any previous year.[13] Nonetheless, Indian Affairs' apprehensions regarding liquor and interests in establishing state law were catalysts for establishing jails on Manitoulin Island.

Larger crimes, such as an arson on the Sucker Creek (Aundeck Omni Kaning) Reserve where a "most industrious and deserving Indian family" were made "homeless" as their cattle and property were lost to the fire, invoked a larger penal system and resulted in further geographical abstraction from the everyday life of Manitoulin Island.[14] The person convicted of this crime was sent to the Penitentiary and the homeless family "by the aid of a liberal grant from the Department and some assistance from the white settlers" was "again placed in a condition of comparative comfort."[15] While this system could still be enacted, locating judicial and carceral services on Manitoulin Island was a matter of convenience as well as a way of infusing the disciplinary arm of the state into the daily lives of settlers as well as "Indians."

On 31 August 1877, Phipps ascertained that liquor consumption amongst Manitoulin Island Indians had decreased and that "many of the staid and respectable Indians are averse to its

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[8] The construction of a lock-up for the Bersimis Band, Québec, was first financed through the DIA before three-quarters of the costs were refunded by provincial Public Works. Department of Indian Affairs. *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1909,* Part I, (Ottawa: CH Parmelee, 1910):131.

[9] Department of the Interior, *Annual Report of the Department of the Interior for the Year ended 30th June, 1875,* Part I, (Ottawa: Maclean, Roger & Co., 1876.):63.

[10] Province of Ontario, *Eighth Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1875,* (Toronto, 1876):90.

[11] *Annual Report of the Department of the Interior,* 1875, Part I, Op. Cit.:63.

[12] Brown, 2006, Op. Cit.:90-91.

[13] Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1878,* (Ottawa: Maclean, Roger & Co., 1879):25.

[14] Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877,* (Ottawa: Maclean, Roger & Co., 1878):21-22.

[15] Ibid:21-22.

use, and that public opinion amongst them is undergoing a change on this subject."[16] Despite this positive report, Phipps thought it "impossible" to "put a stop to its use, notwithstanding the stringency of the laws for the suppression of its use by Indians; by collusion with white men it can generally be obtained."[17] In the same month of the same year, John Langmuir, Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, scouted Manitoulin for the "necessity and desirability of erecting Lock-ups in that island, for which the Government had been petitioned."[18] Langmuir projected that increasing settlement made two lock-ups reasonable and suggested that one be located at Little Current and another at either Manitowaning or Gore Bay.[19] It was determined that, under the auspices of the provincial Department of Public Works, two stone lock-ups designed by provincial architect Kivas Tully would be built at Little Current and Manitowaning.[20]

In April 1878, on the qualification that they complete construction by October or face twenty dollar per week late penalties, the Law Manufacturing Company of Meaford, Ontario, won the call for tenders to construct the lock-ups with the lowest bid.[21] By May 1878, the Government of Ontario was working in conjunction with the DIA to select sites on which to locate these provincial "lock-ups" on Indian lands newly prepared for settlement in the towns of Manitowaning and Little Current.[22] The Manitowaning townplot already had lands reserved by the DIA for a lock-up and the Government of Ontario duly selected this location.[23]

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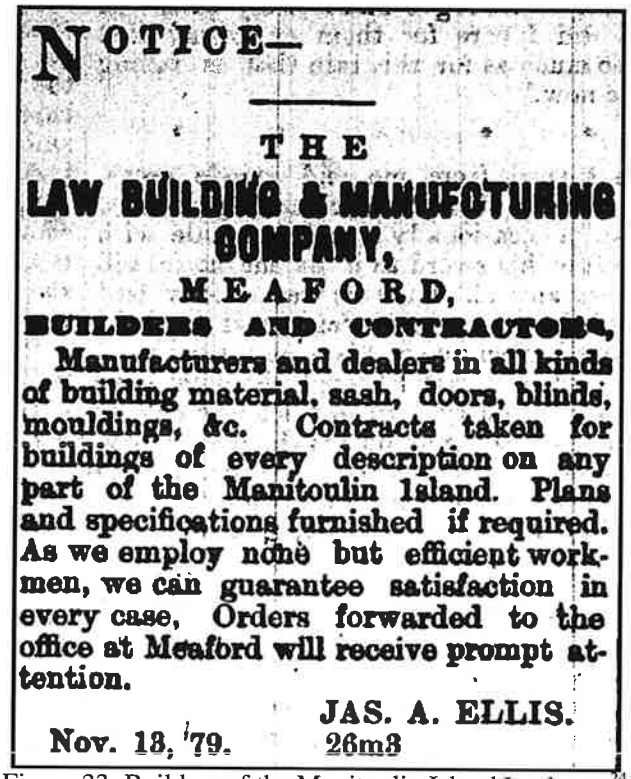
[16] *Report of The Deputy Superintendent General Of Indian Affairs,* 1877, Op. Cit.:21-22.
[17] Ibid.
[18] Province of Ontario, *Tenth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1877,* (Toronto: Hunter, Rose & Co., 1878):130.
[19] Ibid.
[20] These lock-ups were similar to lock-ups built shortly before at Bracebridge and Parry Sound. Kivas Tully, "Report of the Architect, etc., Department of Public Works," *Report of the Commissioner of Public Works, Province of Ontario, For the Year Ending 31 December 1878,* (Toronto: Hunter, Rose & Co., 1879):11; *Tenth Annual Report of the Inspector of Asylums,* 1877, Op. Cit.: 130; Province of Ontario, *Twelfth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1879,* (Toronto: C Blackett Robinson, 1880):84; Brown, 2006, Op. Cit.:90-91.
[21] Mr. Gorley of Manitowaning superintended the construction of both lock-ups as the Clerk of Works. Tully, "Report of the Architect, etc., Department of Public Works," 1878, Op. Cit.:11; *Tenth Annual Report of the Inspector of Asylums*, 1877, Op. Cit.:130; Brown, 2006, Op. Cit.:90-91.
[22] Indian Office Manitowaning to The Honourable Minister of the Interior Indian Branch, 8 May 1878, (Manitowaning), "Manitoulin Island Agency – Jail Facilities on Manitoulin Island," 1878-1952, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 8229, File: 481/4-12.
[23] Ibid.



NOTICE—

THE

LAW BUILDING & MANUFCTURING COMPANY,

MEAFORD,

BUILDERS AND CONTRACTORS,

Manufacturers and dealers in all kinds of building material, sash, doors, blinds, mouldings, &c. Contracts taken for buildings of every description on any part of the Manitoulin Island. Plans and specifications furnished if required. As we employ none but efficient workmen, we can guarantee satisfaction in every case, Orders forwarded to the office at Meaford will receive prompt attention.

JAS. A. ELLIS.

Nov. 13, '79. 26m3

Figure 33: Builders of the Manitoulin Island Lock-ups[24]

In October 1878, the month of the lock-up contract deadline, Phipps apprised his department that, during the past year, there had been "few cases of transgressing the law… when the large number of Indians in this superintendency is considered"; however, in the previous reporting year, there had been a death due to extreme intoxication near Little Current, two convictions for supplying liquor to Indians, a two month jail term for an Indian convicted of keeping a house for the sale of liquor on an Indian Reserve, and two convictions and three month jail terms for Indians convicted of stealing liquor.[25] As Justice of the Peace as well as Indian Agent, Phipps asserted that the "impossibility of getting Indians to testify truthfully in liquor cases" made "it exceedingly difficult to obtain convictions."[26] Moreover, while Phipps had the power to investigate and preside over cases related to the *Indian Act*, cases brought outside of the *Indian Act* against settlers still were heard at the District Criminal Court in Sault Ste. Marie.

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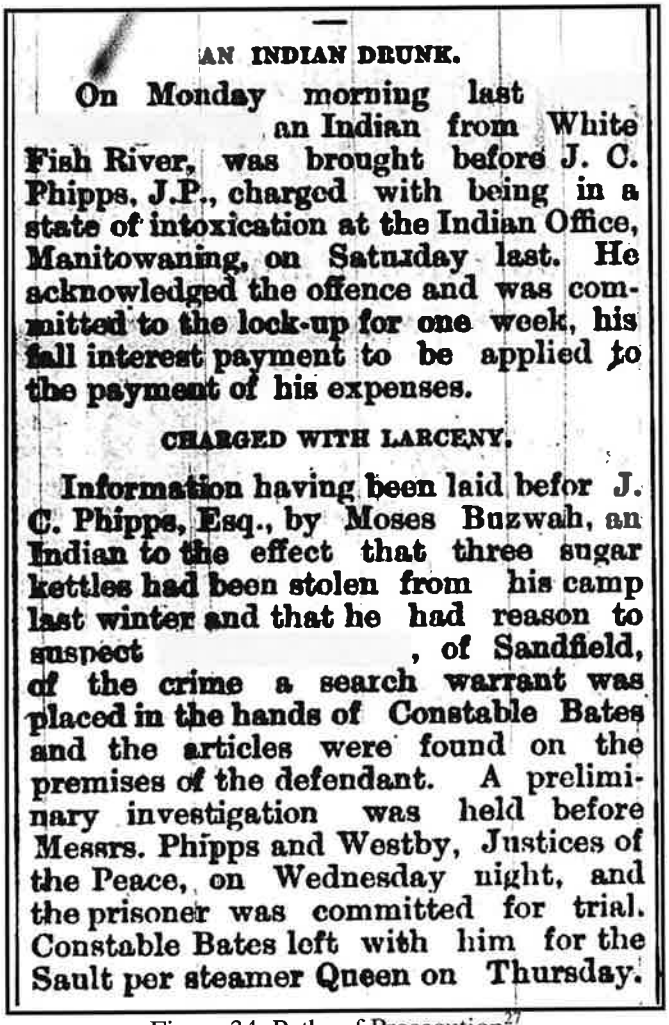
[24] Adapted from *Manitoulin Expositor*, 27 December 1879, Manitowaning.
[25] *Annual Report of the DIA*, 1878, Op. Cit.:25.
[26] Ibid.



AN INDIAN DRUNK.

On Monday morning last an Indian from White Fish River, was brought before J. C. Phipps, J.P., charged with being in a state of intoxication at the Indian Office, Manitowaning, on Saturday last. He acknowledged the offence and was committed to the lock-up for one week, his fall interest payment to be applied to the payment of his expenses.

CHARGED WITH LARCENY.

Information having been laid befor J. C. Phipps, Esq., by Moses Buzwah, an Indian to the effect that three sugar kettles had been stolen from his camp last winter and that he had reason to suspect , of Sandfield, of the crime a search warrant was placed in the hands of Constable Bates and the articles were found on the premises of the defendant. A preliminary investigation was held before Messrs. Phipps and Westby, Justices of the Peace, on Wednesday night, and the prisoner was committed for trial. Constable Bates left with him for the Sault per steamer Queen on Thursday.

Figure 34: Paths of Prosecution[27]

"Indians" might be dealt with by Indian Agents and sent to local lock-ups whereas a more formal investigation, judicial, and carceral process was afforded settlers.

Langmuir's third choice, Gore Bay, was soon also approved as a site for a lock-up. An appropriation was made to build a stone lock-up in the same dimensions and style as the Manitowaning and Little Current Lock-ups.[28] Once again, the Law Building and Manufacturing Company of Meaford won the call for tenders with the lowest bid and the construction occurred

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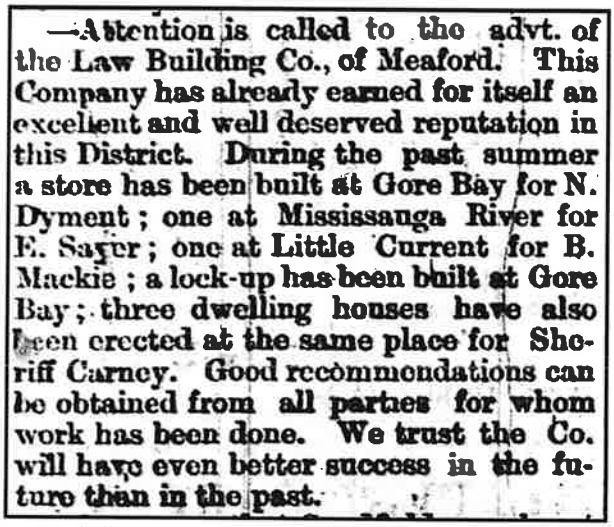
[27] Adapted from *The Manitoulin Expositor*, Saturday 13 September 1879, Volume: 1, No. 17.

[28] Kivas Tully, "Report of the Architect, etc., Department of Public Works," *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1879*, (Toronto: Hunter, Rose & Co., 1880):10; Province of Ontario, *Thirteenth Annual Report of the Inspector of Asylums, Prisons, and Public Charities for the Province of Ontario, for the Year Ending 30th September, 1880,* (Toronto: C Blackett Robinson, 1881):84.

under the supervision of the Clerk of Works.[29]



—Attention is called to the advt. of the Law Building Co., of Meaford. This Company has already earned for itself an excellent and well deserved reputation in this District. During the past summer a store has been built at Gore Bay for N. Dyment; one at Mississauga River for E. Sayer; one at Little Current for B. Mackie; a lock-up has been built at Gore Bay; three dwelling houses have also been erected at the same place for Sheriff Carney. Good recommendations can be obtained from all parties for whom work has been done. We trust the Co. will have even better success in the future than in the past.

Figure 35: The Law Building Company of Meaford Constructs the Gore Bay Lock-up[30]

By early October 1879, the Gore Bay lock-up was nearly complete.[31] The total cost of all three lock-ups to Public Works by December that year was $6521.79.[32]

9.1 Manitowaning Lock-Up

The lock-up site at Manitowaning consisted of the "whole Block" on the west side of Arthur Street between Wellington and Nelson streets.[33] Although Phipps wondered whether they should charge for the disposition of "Indian lands" for the lock-up, the lots selected in Manitowaning were not sold by Indian Affairs to the Province.[34] Instead, "no transfer of this site

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[29] Tully, 1879, Op. Cit.:10.

[30] Adapted from *The Manitoulin Expositor*, Saturday 15 November 1879, Volume: 1, No. 26.

[31] *The Manitoulin Expositor*, Saturday 4 October 1879, Volume: 1, No. 20.

[32] "Statements of the Accountant and Law Clerk – Table No. 2 Statement of the Expenditure on Public Works in 1880, and Total Expenditure thereon up to 31st December 1880 – Capital Account," *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1880*, (Toronto: C Blackett Robinson, 1881):26.

[33] Indian Office to The Honourable Minister of the Interior Indian Branch, 8 May 1878, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.; Deputy Superintendent General of Indian Affairs to Assistant Commissioner of Crown Lands Aubrey White, 7 November 1895, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[34] The jail town block consisted of Lots 1 and 2 on the north side of Nelson Street and Lots 1 and 2 on the south side of Wellington Street. Each of the four lots contained 0.20 acres of land. Although in "1878 the Ontario Government selected these lots for jail" construction "[n]o sale was made." Connor to Dr. Scott, Memorandum Re: Jail Site Manitowaning, 5 September 1928, "Jail Facilities on Manitoulin Island," Op. Cit.; Indian Office Manitowaning to The Honourable Minister of the Interior Indian Branch, 8 May 1878,

was made, it having been simply reserved for the purpose in question."[35] Despite the Department of Indian Affairs' disavowal of any responsibility for the upkeep of the lock-up, and their insistence that the "lock-up was built by and is wholly under the control" of the Ontario Government, the circumstance that the "jail in this village" was "built on Departmental Lots" allowed the DIA to retain an official interest its operation.[36] The DIA also controlled other important sites such as the wharf.

TENDERS—

Will be received at the Indian Office, Manitowaning, on or before the

Eighteenth October Next

for repairing and enlarging the Wharf, the property of the Indian Department, at Manitowaning. specifications can be seen on application to the undersigned.

J. C. PHIPPS,
Visiting Superintendent.

Indian Office, Manitowaning,
Sept. 19, 1879. 1983

Figure 36: The Wharf was "the Property of the Indian Department"[37]

The original Manitowaning Lock-up building contained five cells, one of which has been reconstructed in the Assiginack Museum as a display complete with a prisoner's bedframe.[38]

(Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.; To Visiting Superintendent of Indian Affairs JC Phipps, 21 May 1878, "Jail Facilities on Manitoulin Island," Op. Cit.; Visiting Superintendent BW Ross to the Deputy Superintendent General of Indian Affairs, 17 October 1895, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.; Deputy Superintendent General of Indian Affairs to Indian Superintendent BW Ross, 23 October 1895, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Deputy Superintendent General of Indian Affairs to Assistant Commissioner of Crown Lands Aubrey White, 7 November 1895, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[35] Deputy Superintendent General of Indian Affairs to Inspector of Prisons and Public Charities for Ontario RW Bruce-Smith, 29 September 1905, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[36] Frank Pedley to MP AE Dyment, Memorandum, 31 December 1907, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Indian Agent RJ Lewis to the Secretary of the DIA, 7 September 1920, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

[37] Adapted from *The Manitoulin Expositor*, Saturday 27 September 1879, Volume: I, No. 19.

[38] Brown, 2006, Op. Cit.:90-91.

Figure 37: Reconstructed Cell of the Manitowaning Lock-up

The lock-up was built of stone, with a shingle roof, and a yard delineated by a board fence.[39] While the yard of the lock-up structure was fenced, the larger piece of land on which it stood was not, and a fence, well, and pump were recommended in order to allow cultivation.[40] With appropriate jailkeeping, the site was considered strong, secure, and "large enough for the requirements of the locality, for a long time to come."[41] The keeper of the Manitowaning Lock-up was granted twenty-five cents per day for the rations of each prisoner.[42]

In the first year of its operation, Indian Agent Phipps felt that the lock-up had a "wholesome effect, and greatly tended to check the evil" of liquor consumption.[43] Nonetheless, as settlement of Manitoulin Island proceeded apace, it prompted the opening of legally permitted

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[39] *Thirteenth Annual Report of the Inspector of Prisons,* 1880, Op. Cit.:119.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] *Report of the Deputy Superintendent-General of Indian Affairs,* 1879, Op. Cit.:24.

liquor establishments for settlers. In Phipps' estimation, by 1880, this by-product of settlement "afforded facilities for intoxicants being obtained by Indians; the liquor... usually furnished by some white man who gives it secretly" to Indians despite prohibitions against it.[44] While twelve Indians had been arrested for intoxication and committed to the Manitowaning Lock-up for terms from five to thirty days, Phipps did not obtain any convictions against liquor suppliers that year.[45] The following year, Phipps still maintained that liquor suppliers "generally escape punishment, as the Indians almost invariably endeavor to shield them," although fourteen "Indians" had been sentenced to what he considered short terms in the Lock-up.[46]

In contrast to its expansive site, the approximately five by eight metre area of the original lock-up building soon became too constrained.[47] Even though the lock-up was being used to jail "Indians," by 1880, the jailkeeper's family had commandeered part of the cell area.[48] In contravention of an officer of the Inspector of Prisons, the jailkeeper did not keep all items from the cell area except for the lock-up furniture.[49] His family life spilled out of their two rooms into the lock-up when the quarters meant for female prisoners were not occupied.[50] A two-storey stone jailer's home was added to the front of the structure in 1882.[51]

Unfortunately, in 1887, the lock-up was still "too much mixed up with the domestic arrangements of the keeper" and a prisoner escaped, it seemed, because the jailkeeper's wife admitted a visitor to the lock-up in the absence of her husband.[52] A subsequent examination by an officer of the provincial Inspector of Prisons and Public Charities found that, while the Manitowaning Lock-up did not contain any inmates on that day, it was dirty, overcrowded, and

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[44] *Annual Report of the DIA,* 1880, Op. Cit.:20.
[45] Ibid.
[46] Department of Indian Affairs. *Annual Report of the Department of Indian Affairs for the year ended 31 December 1881,* (Ottawa: Maclean, Roger & Co, 1882):5.
[47] Brown, 2006, Op. Cit.:90-91.
[48] *Thirteenth Annual Report of the Inspector of Prisons,* 1880, Op. Cit.:119.
[49] Ibid:119, 124.
[50] Ibid.
[51] The estimated cost of this addition was $300. The tender of FJ Sylvester of Parry Sound was accepted and the construction proceeded under the superintendence of Mr. Gorley, Clerk of Works. Province of Ontario, *Fourteenth Annual Report of the Inspector of Prisons & Public Charities for the Province of Ontario, for the Year Ending 30th September 1881,* (Toronto: C Blackett Robinson, 1882):124; Province of Ontario, *Report of the Commissioner of Public Works for the Province of Ontario, for the Year Ending 31st December, 1882,* (Toronto: C Blackett Robinson, 1883):9; Brown, 2006, Op. Cit.: 90-91.
[52] The lock-up keeper's wife was reprimanded and admonished to not have anything to do with the custody of male prisoners. Province of Ontario, *Nineteenth Annual Report of the Inspector of Prisons & Public Charities upon the Common Gaols, Prisons and Reformatories for the Province of Ontario for the Year Ending 30th September 1886,* (Toronto: Warwick & Sons, 1887):67.

one room, usually the realm of the jailer, was being used as a makeshift registry office.[53] Even with the expansion, the lock-up building was simply too small to accommodate a dwelling house.[54]

Although the land upon which the lock-up was built was larger than that required for the building, even as the settler population of Manitowaning grew, the DIA would not sell the land "at any price" because of its designation for public use as a lock-up.[55] In 1905, RW Bruce Smith, Inspector of Prisons and Public Charities of Ontario, apprised the DIA that the lock-up certainly did not require the entire portion of land allotted to it and that an adjacent saw-mill owner offered to fence the land occupied by the lock-up in exchange for the unused portion of the block.[56] The Department of Indian Affairs responded that if the entire area was not required, Smith should provide a plan of the portion that was needed for the lock-up so that the DIA could "make disposition of the remainder of the Lot, for the benefit of the Indians."[57] The plan did not proceed and the Manitowaning Lock-up townplot reservation remained "Indian Land" under Indian Affairs' control.

Instead, Smith proposed that the "vacant and unused" part of the lot that, contrary to DIA ideals, was unfenced and "could not be cultivated," be made useful through a "lease during pleasure" to a party who agreed to the condition that a high fence completely enclose the entire lock-up property.[58] Although the Inspector of Prisons claimed a certain right to propose this arrangement, on the basis of the lot having been reserved for the lock-up, it "seemed both right and courteous that the Department of Indian Affairs should be informed of the proposition."[59] The DIA's definitive voice in the matter was evident when Smith asked the Department to "sanction and approve" the proposal that would result in the improvement of the lock-up property.[60] In this case, the DIA did approve Smith's plan.[61]

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[53] The Manitowaning Lock-up also lacked a well and fence that had been previously recommended. Province of Ontario, *Twenty-First Annual Report of the Inspector of Prisons & Public Charities upon the Common Gaols, Prisons and Reformatories for the Province of Ontario for the Year Ending 30th September 1888*, (Toronto: Warwick & Sons, 1889):76.
[54] Ibid.
[55] The Deputy Superintendent General of Indian Affairs to Indian Superintendent of Manitowaning BW Ross, 23 October 1895, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[56] Inspector of Prisons and Public Charities for Ontario RW Bruce Smith to Secretary of Indian Affairs JD McLean, 22 September 1905, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.
[57] The Deputy Superintendent General of Indian Affairs to Inspector of Prisons and Public Charities for Ontario RW Bruce-Smith, 29 September 1905, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[58] Inspector of Prisons and Public Charities RW Bruce Smith to Deputy Superintendent General of the DIA F Pedley, 8 November 1906, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[59] Ibid.
[60] Ibid.

As ownership of the land remained within the Department of Indian Affairs' guardianship, requests for purchase continued. Once again, DIA control was an obstacle when, in 1907, all of the unsold Indian lands on Manitoulin Island were removed from the market for revaluation "in view of the increased value of the lands… in order to obtain the best prices possible in the interests of the Indians."[62] The DIA had been criticized in Parliament for failing to fulfill their guardianship role by selling land on Manitoulin Island at low prices to "very close friends of the government."[63] In 1912, the Indian Agent at Manitowaning was still "not at liberty to sell lots" in the town of Manitowaning.[64]

In this way, as the town of Manitowaning grew and became more associated with emerging settler society than its roots as an administrative town of the Department of Indian Affairs, the origins and purposes of the lock-up were obscured. Manitowaning Indian Agent RJ Lewis was alarmed when he learned that, on 16 August 1920, an "Indian who had been arrested for being intoxicated was taken to Manitowaning" and the "man in charge of the lock-up there refused to incarcerate him, and therefore, he had to be taken back to the reserve."[65] Lewis himself had been maligned with the accusation, "I refused to act by myself when the information was laid against this Indian, and that owing to the delay, he and several other Indians who were reported to have been intoxicated have left the reserve, and the constable has been therefore unable to serve them with summonses."[66] Lewis countered with his own report that the individual was arrested at Wikwemikong and, on arrival at the Manitowaning Lock-up, the "keeper refused to incarcerate the prisoner, as he claimed that it is not an Indian jail and that it belongs to the municipality."[67]

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[61] Acting Deputy Superintendent General to Inspector of Prisons and Public Charities RW Bruce Smith, 13 November 1906, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[62] The Secretary of the DIA responded to one request with the information that the coveted land could not be sold because "all lands on the Manitoulin Island were some time ago withdrawn from sale" and had "not since been replaced in the market. "Secretary of Indian Affairs to Indian Agent of Manitowaning CLD Sims, 27 August 1908, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1908*, (Ottawa: SE Dawson, 1909):xxxvi.; Secretary JD McLean to Indian Agent Sims, 3 May 1907, (Ottawa), "Manitowaning Agency – Correspondence Reports and Surveys Regarding the Sale of Land on Manitoulin Island (Lists of Unsold Lots By Township, Plans, Notebook of Timber Inspector John Fraser of Gore Bay," 1896-1916, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2885, File: 180,661-1, Access Code: 90.

[63] *The Hansard*, 1907: 7747, "Manitowaning Agency – Correspondence Reports and Surveys", Op. Cit.

[64] Assistant Deputy and Secretary of the DIA to Indian Agent Wm McLeod, 13 August 1912, (Ottawa), "Manitowaning Agency – Correspondence Reports and Surveys", Op. Cit.

[65] Indian Agent for Manitowaning RJ Lewis to Secretary of Indian Affairs, 7 September 1920, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

[66] Lewis to Secretary of Indian Affairs, 7 September 1920, "Jail Facilities on Manitoulin Island," Op. Cit.

[67] Ibid.

The management of the larger building had been transferred from the Provincial seat in Toronto to the Municipality of Assiginack.[68] The lock-up was in "disgraceful condition… filthy dirty and… in use as a store-house" for papers, books, and cement.[69]

The Assiginack Municipal Constable in charge of the lock-up appeared to have a pattern of refusing to "incarcerate Indian prisoners brought by Indian constables."[70] Acting Deputy Superintendent General JD McLean brought the problem to the attention of Ontario Attorney General RK Raney.[71] In McLean's view, it was unreasonable that a prisoner could be refused incarceration in the lock-up "on the mere ground that he is an 'Indian' as there is no distinction between an Indian and any other resident of the Province with respect to criminal offences."[72] McLean's assertion appears to be more in line with the administrative expediencies necessary for continued use of the Manitowaning Lock-up to incarcerate "Indians" than any reality of equitable practice.

The highly centralized Department of Indian Affairs had already established their protocol for this type of challenge. In 1907, the Deputy Attorney General of the Province of Manitoba advanced a claim to DIA reimbursement for the maintenance of an "Indian" in the Brandon Gaol because the prisoner had been convicted under the *Indian Act*.[73] Deputy Minister of Justice Newcombe explained that there was "no foundation for such a claim" because the

> provinces are charged under the constitution with the administration of justice, both civil and criminal, including the establishment, maintenance and management of gaols, and this includes the cost of maintenance of all prisoners lawfully committed to such prisons. The fact that the offence is one under the Indian Act, or that the person convicted is an Indian is immaterial.[74]

In the context of Manitoulin Island, Deputy Attorney General Edward Bayly concurred that all jails in Ontario are "common gaols" and the transfer of the lock-ups to the Municipalities did not alter their use for prisoners remanded or committed to them; however, he understood from the jailkeeper that the

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[68] Lewis to Secretary of Indian Affairs, 7 September 1920, "Jail Facilities on Manitoulin Island," Op. Cit.
[69] Ibid.
[70] Ibid.
[71] Acting Deputy Superintendent General of Indian Affairs JD McLean to Attorney General the Honourable WK Raney, 11 September 1920, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[72] Ibid.
[73] Deputy Minister of Justice EL Newcombe to the Secretary of the DIA, 19 March 1907, (Ottawa), "Correspondence Regarding the Sale of Intoxicants," Op. Cit.
[74] Ibid; Correspondence also appears in: "Dept. of Justice Opinions – Vol. 3," 1900-1910, National Archives of Canada, RG10: Department of Indian Affairs, Series B-8, Volume: 11195, File: 1, Access Code: 32.

> only Indian prisoner who had been refused admittance in the gaol was one who was brought in by an Indian Constable on a charge of being drunk but who the lockup keeper said was sober. The Indian Agent was in the village but the Constable had not taken the prisoner to him. Under the circumstances the lockup keeper at Manitoulin states that he considered he was well within his rights and asking for some authority otherwise as he might have been liable for an action of false imprisonment... the Lockup keeper says that they had quite a few Indian prisoners in the lockup this year and have fed and supplied them with wood but that he has not received payment for any of this.[75]

Even the Attorney General's interest did not resolve the deplorable state of the Manitowaning Lock-up building.

The block was unfenced and desperately in need of improvement when the Municipality requested that the DIA allow them to use it as a site for a war memorial.[76] The municipal clerk wished MP Beniah Bowman to inquire into having the ownership of the "old jail" lot on the corner of Wellington and Nelson Streets transferred by deed from Indian Affairs to the municipality for a new Town Hall and war memorial.[77] The Municipality and Memorial Committee intended to grade and enclose the land in order to "convert into an attractive spot what is at present an eyesore" as well as, with the efforts of the Women's Institute, cultivate flowerbeds in the "very stony" grounds that were otherwise unsuitable for cultivation.[78] The municipality wanted two lots in the reserved block; however, if they were only able to get one lot, they insisted that it be the lot where the lock-up was located since they wanted to erect the War Memorial on amenable elevated ground in front of the building.[79] The lock-up structure was "falling into decay as no money" had been spent on its maintenance "for many years."[80] The Municipal Council undertook to revitalize the lock-up as a working jail and maintain it using

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[75] Deputy Attorney General Edward Bayly to Acting Deputy Superintendent General of Indian Affairs JD McLean, 19 October 1920, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.

[76] Department of Indian Affairs Lands and Timber Branch to Dr. Scott, 5 September 1928, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; DCS to MP Beniah Bowman, 7 September 1928, "Jail Facilities on Manitoulin Island," Op. Cit.

[77] Bowman informed Deputy Superintendent General of Indian Affairs Duncan Campbell Scott, "they are anxious to secure from your Department" ownership of the lock-up lands. MP Beniah Bowman to Chief Clerk and Secretary of Indian Affairs AF Mackenzie, 4 April 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; MP Beniah Bowman to Deputy Superintendent General of Indian Affairs Scott, 19 April 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[78] In more recent years, members of the Ontario Horticultural Association have tended the flowerbeds of the Assiginack Museum. Ontario Horticultural Association, "2009 Reports of District Directors," <<http://www.gardenontario.org/docs/200910AnnualReport_Part2of5.pdf>>; Clerk of the Municipality of Assiginack W Beresford Tilston to MP Beniah Bowman, 17 April 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

[79] Tilston to Bowman, 17 April 1929, "Jail Facilities on Manitoulin Island," Op. Cit.

[80] Ibid.

Council funds.[81] They made an offer for the land yet hoped that the DIA could "see their way to donate the site" as it would be a large expense for a small community.[82] With the approval of Deputy Superintendent General Duncan Campbell Scott, it was proposed that the entire lock-up block be sold for two hundred twenty dollars, one-tenth cash, and the balance with interest at a rate of six percent.[83]

Under these circumstances, the Department of Indian Affairs saw no barrier to "our disposing of the property" to the municipality yet was not able to do so by donation "owing to the lots being Indian property and not Dominion Lands."[84] Meanwhile, Indian Agent RJ Lewis of Manitowaning differed with the Department's willingness to sell the lock-up because he was under the impression that it would be entirely converted into a municipal hall.[85] The concerned Indian Agent took exception to the sale because the Manitowaning Lock-up was the "only jail on the eastern portion of Manitoulin Island" and had continuously, "since erected, been in use in connection with the Indians, of Wikwemikong Reserve."[86] If the lock-up were closed, Lewis asserted that it would be "necessary for the Department to erect a new lock-up for the Indians as we will have to have some sort of a jail in the vicinity to Wikwemikong Reserve on account of the District Gaol being seventy five miles from Wikwemikong."[87] While Lewis soon learned that the jail would continue to function, he maintained that the Department should confirm this understanding before proceeding with the sale.[88] Nonetheless, Director of Indian Lands JC Caldwell wrote to the Clerk of the Municipality asking for an assurance that the jail would be retained lest a facility that had "always been used in connection with the incarceration of law breaking Indians" be removed and leave the Wikwemikong Reserve without a neighbouring lock-up.[89] The Municipality affirmed their promise and, accordingly, settled the bill with the DIA on 19 September 1929.[90]

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[81] Tilston to Bowman, 17 April 1929, "Jail Facilities on Manitoulin Island," Op. Cit.
[82] Ibid.
[83] Director of Indian Lands and Timber to the Deputy Superintendent General, 12 June 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[84] The DIA offer was based on similar lots south of Nelson Street that sold for $220.00 "on a one-tenth cash basis with interest at 6%." Acting Deputy Superintendent General to the Honourable Beniah Bowman, MP, 23 April 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.; Director of Indian Lands and Timber to the Deputy Superintendent General, 12 June 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.
[85] Indian Agent to the Secretary of Indian Affairs, 15 May 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Director of Indian Lands and Timber Caldwell to the Clerk of the Municipality of Assiginack J Beresford

It appeared that the overlapping ownership of the Manitowaning Lock-up was finally legally resolved. The jailkeeper's dwelling was indeed converted into a municipal office and library in 1945 and the cells were removed as the jail itself became the Assiginack Museum in 1955.[91] The Assiginack Museum expanded into the dwelling in 1976.[92] In its current form, the original lock-up exterior is enclosed in additions, yet the walls, one window, the door to the day room, and a fireplace remain.[93]

9.2 Little Current Lock-up

Set on a lot with an open spaciousness not often seen in Canadian towns, the lock-up stands out, or rather sits back, in Little Current. The Little Current Lock-up was used as a jail from the time of its establishment in 1878 until 1952. From the 1930s until it was officially closed, its carceral functions coexisted with other functions such as an OPP office, a library, and a meeting place for the local council.[94] Despite long years of disuse, it has survived as the oldest building in Little Current.[95]

The Little Current Lock-up is very similar in construction to the original lock-ups at Manitowaning and Gore Bay; however, it contained only two cells within its six by nine metre structure and the lock-up keeper did not live in the building.[96] Instead, he lived in a house a mere five yards away and, when prisoners were in the lock-up, was required to keep a constant guard.[97] Most early reports of the Inspector of Prisons found the Little Current Lock-up clean and orderly.

Tilson, 22 June 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.

[90] Director of Indian Lands and Timber Caldwell to Indian Agent RJ Lewis, 20 July 1929, (Ottawa), "Jail Facilities on Manitoulin Island," Op. Cit.; Clerk W Beresford Tilston to Director of Indian Lands and Timber JC Caldwell, 19 September 1929, (Manitowaning), "Jail Facilities on Manitoulin Island," Op. Cit.

[91] Brown, 2006, Op. Cit.:90-91.

[92] Ibid.

[93] Ibid.

[94] Ibid:86-87.

[95] Ibid.

[96] *Thirteenth Annual Report of the Inspector of Prisons,* 1880, Op. Cit.:120; *Report of the Commissioner of Public Works,* 1880, Op. Cit.:10; Brown, 2006, Op. Cit.:86-87.

[97] *Thirteenth Annual Report of the Inspector of Prisons,* 1880, Op. Cit.:120.

Figure 38: The Little Current Lock-up

Similar to the Manitowaning Lock-up, jail terms could often be the result of lack of resources. On 29 August 1888, the "clean and satisfactory" Little Current Lock-up held one woman "in custody for want of sureties" that she would keep the peace."[98] Matters of law and liquor were closely entwined on Manitoulin Island and were, frequently, the basis on which "Indians" were committed to jail. Phipps reported in 1882 that "cases of intemperance" had been common among the young and nineteen individuals had been jailed for five to twenty days "in nearly all cases being willing to submit to imprisonment rather than divulge the name of the person who furnished the liquor."[99] While nineteen people received jail terms, only one fine was levied.[100]

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[98] Province of Ontario, *Twenty-first Annual Report of the Inspector of Prisons & Public Charities for the Province of Ontario, for the Year Ending 30th September 1888*, (Toronto: Warwick & Sons, 1889):76.
[99] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31 December, 1882*, Part 1, (Ottawa: Maclean, Roger & Co., 1883):4.
[100] Ibid.

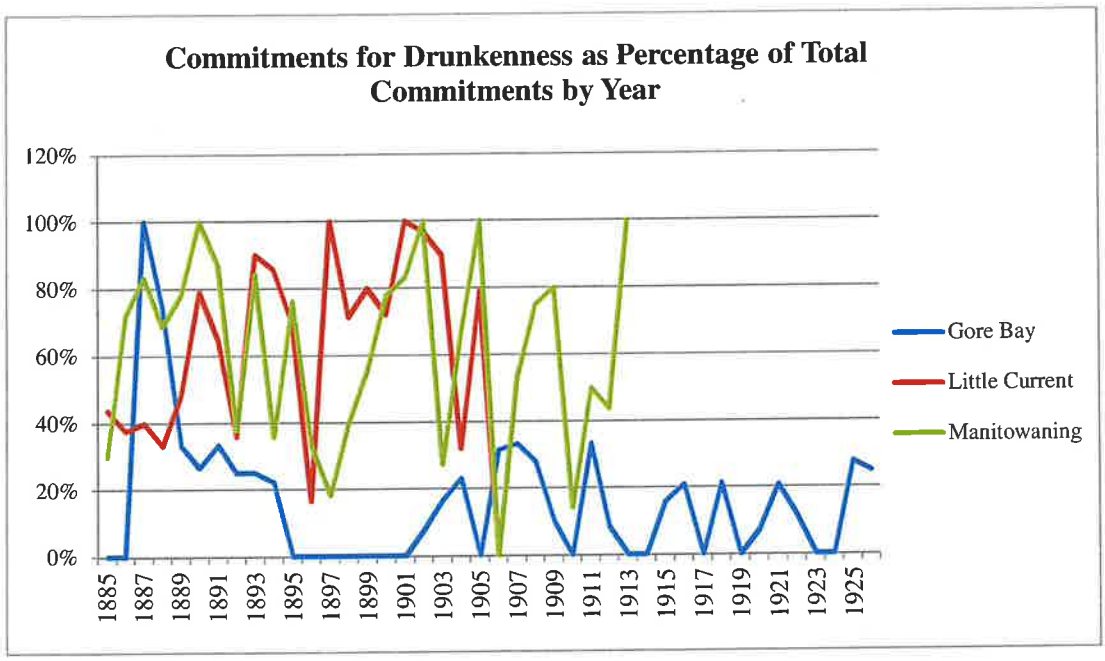

Figure 39: The Offence of Drunkenness as Percentage of Total Commitments to the Provincial Manitoulin Lock-ups[101]

In 1888, William Gibbon, Reeve of Howland, gave what Indian Affairs considered a "greatly exaggerated" account of a Chief of the Sucker Creek (Aundeck Omni Kaning) Band found "lying on the road drunk and in a frozen condition."[102] Despite paltry progress in ascertaining who had supplied the liquor, Indian Agent Phipps secured "great promises of amendment" from the injured man.[103] Although Phipps believed that the man did not refrain from the use of intoxicants, he hesitated in reporting him to the DIA because he had been very helpful in a recent case of serious crime where he "assembled the Band and after a hasty investigation

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[101] See Appendix C; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1885-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924.

[102] Howland Reeve William Gibbon to JC Phipps, 23 June 1888, (Little Current), "Manitowaning Agency – Correspondence Regarding the Misconduct of Chief [Name Withheld] of the Sucker Creek Band," 1888-1890, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2427, File: 88,576, Access Code: 90; Indian Office to the Superintendent General of Indian Affairs, 13 February 1888, (Manitowaning), "Correspondence Regarding the Misconduct," Op. Cit.

[103] JC Phipps to the Honourable, 26 December 1888, (Manitowaning), "Correspondence Regarding the Misconduct," Op. Cit.

arrested all those upon whom suspicion seemed to rest and took them to Little Current where they were handed over to the authorities – had he not done this there was nothing to prevent their escape."[104] Phipps advocated for admonishing the man and cautioning him that future offences would result in the removal of the Department's recognition of his role as Chief.[105] Unfortunately, the Chief was confined to the Little Current Lock-up when he was found to be intoxicated on Dominion Day 1889.[106] Phipps then recommended that the Chief be removed from his leadership role because his example was "injurious" to "other Indians" and conformity to sobriety did not seem likely.[107] The Department of Indian Affairs approved Phipps' recommendation.[108] Although the Chief was legitimately elected by his band, the Department of Indian Affairs' estimation of his positive or negative influence on assimilative criminal law was a pivotal factor in their recognition of his position.

9.3 Providence Bay Lock-up

The Providence Bay Lock-up, a very small building now rented out to tourists, is not one of the major provincial lock-ups. In its phase as one of Sullivan's Cottages, its two cells have been remodeled into a bedroom.[109] A plaque by the door of the cottage jail states that it was constructed in 1912.[110] The Department of Public Works reports that a five hundred dollar grant was made to a Lock-up in Providence Bay between 1867 and 31 October 1911 and no funds were allocated to it in the following year.[111] The Providence Bay Jail is not included in the statistics of the annual Inspector of Prisons reports on the other three Manitoulin Island lock-ups.[112] Nonetheless, a constable was stationed at Providence Bay.[113] The lock-up was likely used as an

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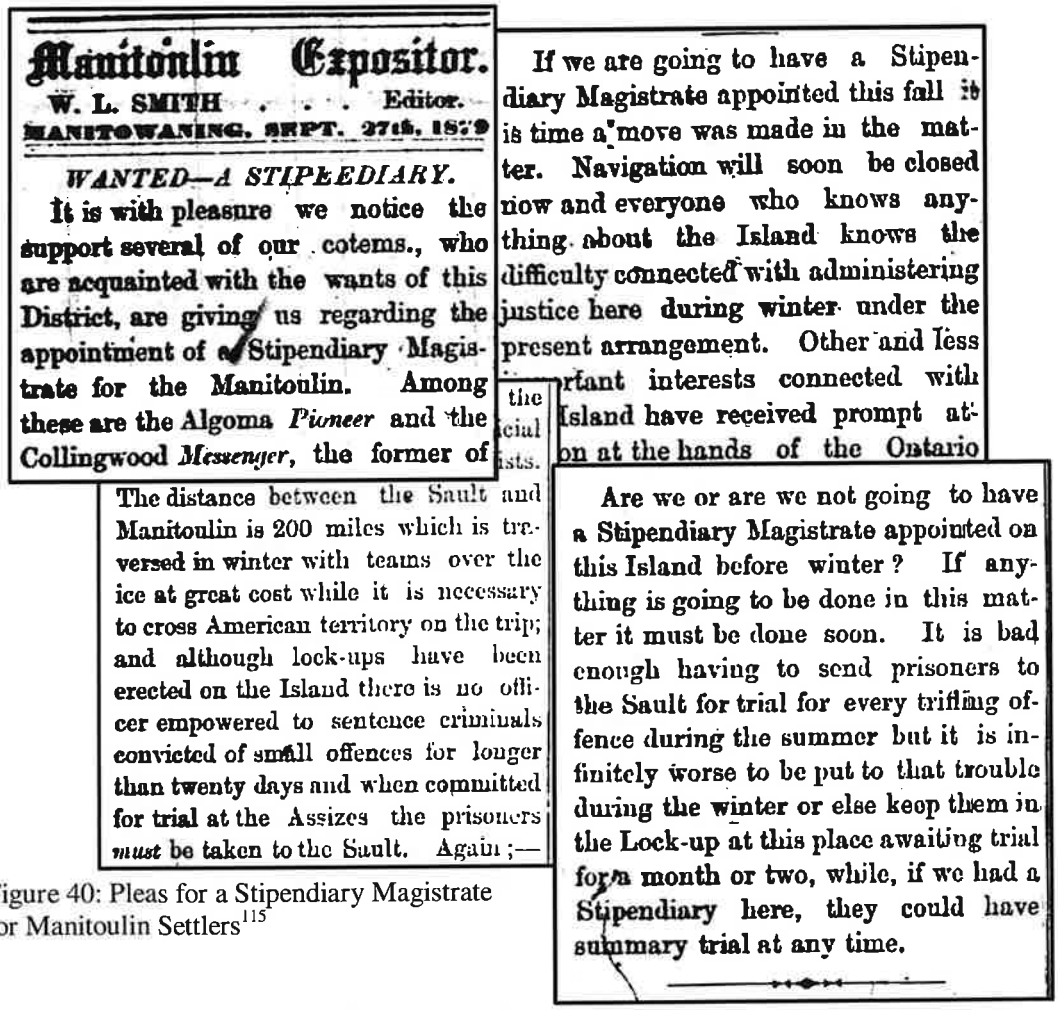
[104] JC Phipps to Superintendent of Indian Affairs, 27 March 1889, (Manitowaning), "Correspondence Regarding the Misconduct," Op. Cit.
[105] Ibid.
[106] JC Phipps to Deputy Superintendent General of Indian Affairs, L Vankoughnet,10 July 1889, (Manitowaning), "Correspondence Regarding the Misconduct," Op. Cit.
[107] Ibid.
[108] to Indian Superintendent Phipps, 22 July 1890, "Correspondence Regarding the Misconduct," Op. Cit.
[109] Brown, 2006, Op. Cit.:96-98.
[110] Ibid.
[111] Province of Ontario, *Report of the Minister of Public Works for the Province of Ontario for the Year Ending 31st October 1912*, Table No. 2, (Toronto: LK Cameron, 1913):124.
[112] Province of Ontario, *Forty-Seventh Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 31st October 1914*, (Toronto: LK Cameron, 1915):123.
[113] Brown, 2006, Op. Cit.:96-98.

overnight place of confinement. By the late 1930s, it was no longer in use.[114]

9.4 Gore Bay Lockup, District Jail, and Courthouse



Manitoulin Expositor.

W. L. SMITH . . . Editor.

MANITOWANING, SEPT. 27th, 1879

WANTED—A STIPEEDIARY.

It is with pleasure we notice the support several of our cotems., who are acquainted with the wants of this District, are giving us regarding the appointment of a Stipendiary Magistrate for the Manitoulin. Among these are the Algoma *Pioneer* and the Collingwood *Messenger*, the former of

If we are going to have a Stipendiary Magistrate appointed this fall it is time a move was made in the matter. Navigation will soon be closed now and everyone who knows anything about the Island knows the difficulty connected with administering justice here during winter under the present arrangement. Other and less ...rtant interests connected with Island have received prompt at- ...on at the hands of the Ontario

the ...cial ...sts.

The distance between the Sault and Manitoulin is 200 miles which is traversed in winter with teams over the ice at great cost while it is necessary to cross American territory on the trip; and although lock-ups have been erected on the Island there is no officer empowered to sentence criminals convicted of small offences for longer than twenty days and when committed for trial at the Assizes the prisoners *must* be taken to the Sault. Again ;—

Are we or are we not going to have a Stipendiary Magistrate appointed on this Island before winter? If anything is going to be done in this matter it must be done soon. It is bad enough having to send prisoners to the Sault for trial for every trifling offence during the summer but it is infinitely worse to be put to that trouble during the winter or else keep them in the Lock-up at this place awaiting trial for a month or two, while, if we had a Stipendiary here, they could have summary trial at any time.

Figure 40: Pleas for a Stipendiary Magistrate for Manitoulin Settlers[115]

In the autumn of 1879, as construction on the Gore Bay Lock-up neared completion, Manitoulin Island was in an awkward judicial phase. Ironically, with growing settlements such as Gore Bay, where seventeen other town buildings were erected in the 1879 construction season,

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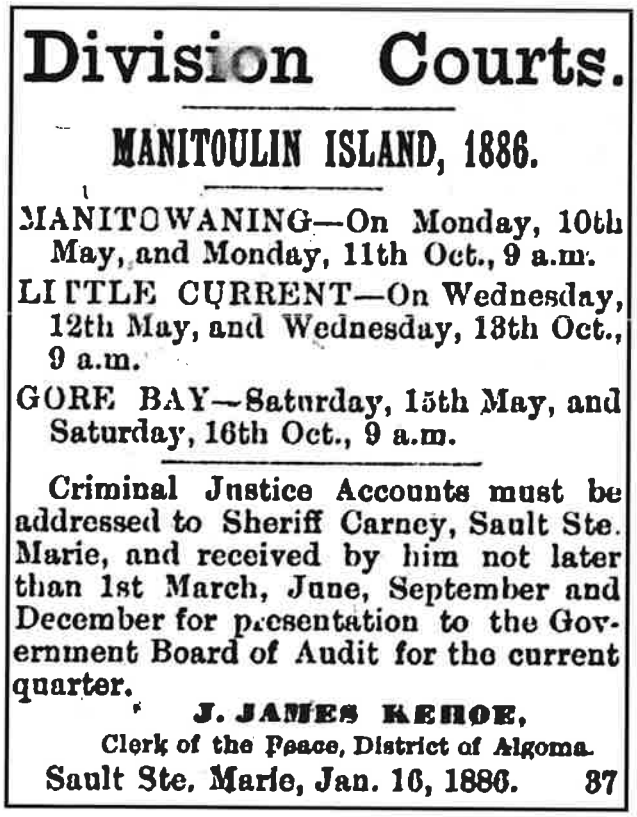
[114] Brown, 2006, Op. Cit.:96-98.

[115] Adapted from *The Manitoulin Expositor*, 15 November 1879, Op. Cit.; *The Manitoulin Expositor*, 8 November 1879, Volume: 1, No. 25; *The Manitoulin Expositor*, 27 September 1879, Op. Cit.; *The Manitoulin Expositor*, 13 September 1879, Op. Cit.

the area was under-serviced in the administration of justice.[116] While the lock-ups were put to use because most "Indian" infractions could be tried through Indian Affairs, and provincial officials held limited judicial powers, Sault Ste. Marie was still the designated District Gaol to which Manitoulin Island settlers would be sent. Therefore, despite the presence of lock-ups, settler communities advocated for better access to the administration of justice. The *Manitoulin Expositor* and other local papers in the region took up this cause. In addition to the summary convictions that already took place in the Indian Agent's office, Division Courts were added to the administrative judicial quiver of settlers on Manitoulin Island.



Division Courts.

MANITOULIN ISLAND, 1886.

MANITOWANING—On Monday, 10th May, and Monday, 11th Oct., 9 a.m.

LITTLE CURRENT—On Wednesday, 12th May, and Wednesday, 13th Oct., 9 a.m.

GORE BAY—Saturday, 15th May, and Saturday, 16th Oct., 9 a.m.

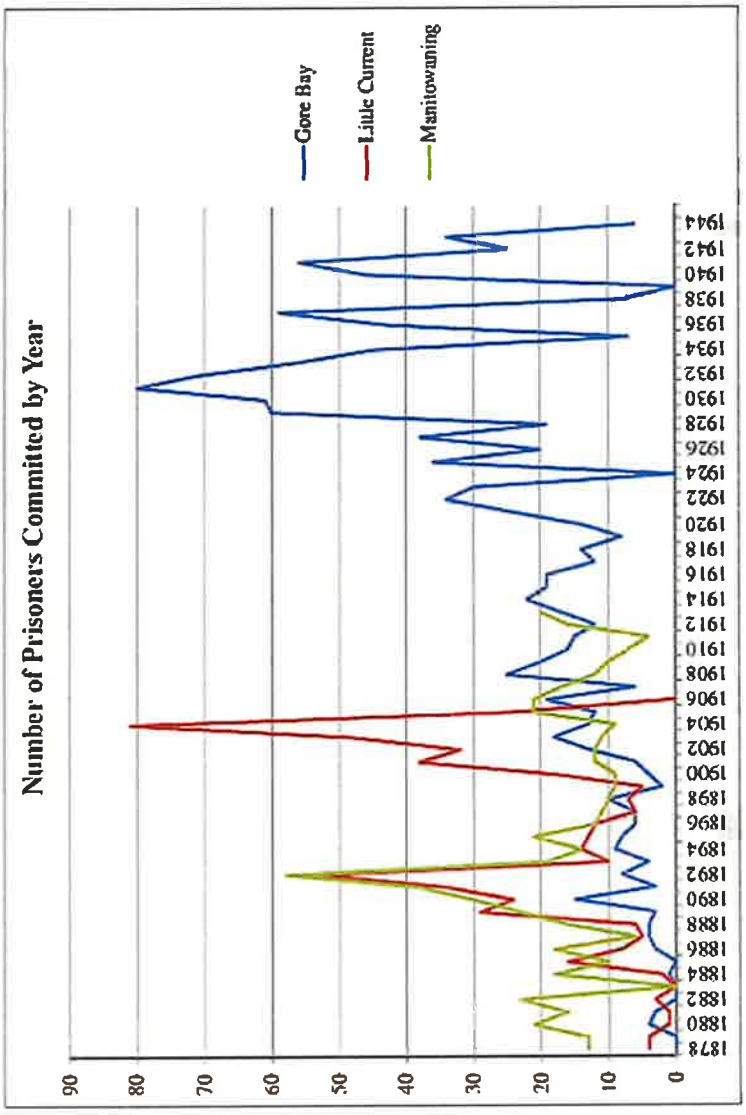
Criminal Justice Accounts must be addressed to Sheriff Carney, Sault Ste. Marie, and received by him not later than 1st March, June, September and December for presentation to the Government Board of Audit for the current quarter.

J. JAMES KEHOE,
Clerk of the Peace, District of Algoma.
Sault Ste. Marie, Jan. 16, 1886. 37

Figure 41: Division Courts of Manitoulin Island[117]

[116] Shelley J Pearen, *Exploring Manitoulin*, 3rd edition, (Toronto: University of Toronto Press, 2003):91-92.
[117] Adapted from "Division Courts," *Manitoulin Expositor*, 23 October 1886, Manitowaning, Volume: III, No. 3; *Manitoulin Expositor*, 30 January 1886, Manitowaning, Volume: II, No. 37.

Figure 42: Number of Prisoners Committed by Year to Manitoulin Provincial Lock-ups[118]



[118] The Sessional Papers of the Province of Ontario do not consistently report statistics for all of the years in which these jails were in operation. Although government reports can be somewhat variable in what is published year-to-year, part of the reason that the Gore Bay Jail reports continued until its closure, while the lock-ups did not, is that it became a District Gaol while they were turned over to the municipalities. Annual Reports of the Inspector of Asylums, Prisons and Public Charities for the Province of Ontario, 1879-1880; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1883-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1881-1882, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925-1935; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924; Annual Reports upon the Prisons and Reformatories of the Province of Ontario, 1936-1945.

In 1889, a courthouse and registry office were added to the Gore Bay Lock-up and the assemblage was in operation as the judicial administrative seat of the District of Manitoulin.[119] The increase in convictions that coincided with these additions required the *Manitoulin Expositor*, now operating in Little Current instead of Manitowaning, to publish a full-page supplement.[120]

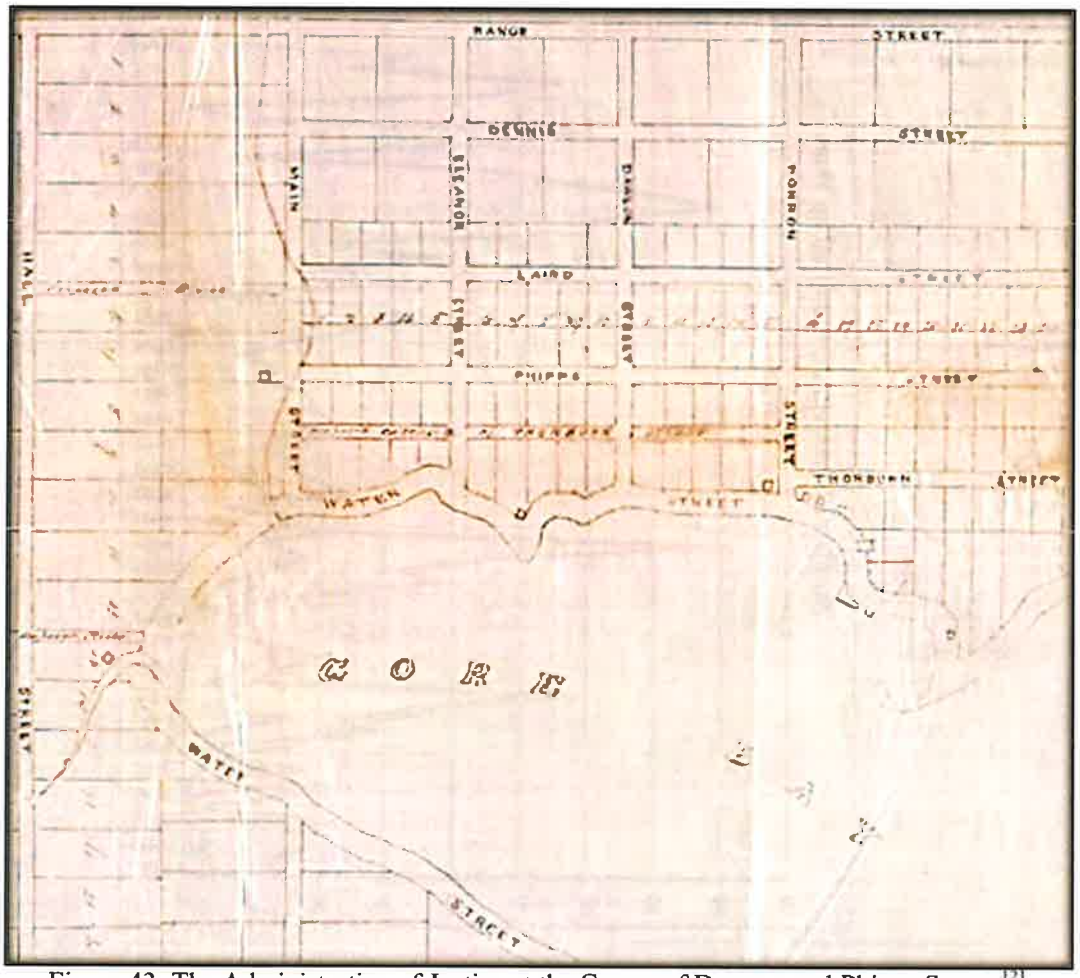


Figure 43: The Administration of Justice at the Corner of Dawson and Phipps Streets[121]

[119] The contract awarded to George Ball of Barrie on 18 June 1889 was valued at $5680. Province of Ontario, "Statements of the Accountant and Law Clerk," *Report of the Commissioner of Public Works for the Province of Ontario for the Year Ending 31st December 1889*, (Toronto: Warwick & Sons, 1890):10, 42; Inspector of Legal Offices, *Sixth Annual Report of the Inspector of Legal Offices*, (Toronto: Warwick & Sons, 1889):4; Brown, 2006, Op. Cit.:31-33.

[120] *Supplement to The Manitoulin Expositor*, Saturday 4 January 1890, Little Current.

[121] Adapted from "Manitowaning – Correspondence from JC Phipps Concerning Squatters in Gordon Township and the Survey of the Townplot of Gore Bay," 1875-1876, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 1940, File: 3923, Access Code: 90.

The courthouse was a gabled two-storey stone building.[122] The Crown Attorney's residence was beside the courthouse.[123] The "Canadian plan" Gore Bay Jail comprised a two-storey jailkeeper's house attached to a jail building with ground-floor cells for men and second-floor cells for women.[124]

Figure 44: The Gore Bay Registry Office, Jail, and Courthouse, 1907[125]

Manitoulin settler communities appealed to the federal government to address criminal matters and Manitoulin Island Juries turned their attention to the issue of the intoxicant trade. A 1902 sitting of the Grand Jury congratulated the judge that law and order were "fairly well maintained in the District, considering the great disadvantage under which [they] labor[ed] in the presence of such a large Indian population."[126] Although the Gore Bay Jail was clean, it was poorly ventilated and equipped.[127] In their opinion, incarceration in the jail for "any length of time" would cause inconvenience to the jailkeeper and "serious injury" to the health of prisoners.[128] A new jail and keeper's residence was needed.[129] The Grand Jury expressed regret that the "selling of liquor is so prevalent between unprincipled white men and Indians" and proposed that the Dominion Government address this problem by partially funding a constable "especially charged with this duty" because if "the Indian is to be saved from the curse of

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[122] Brown, 2006, Op. Cit.:31-33.
[123] Ibid.
[124] Ibid.
[125] Photograph by author of display in Gore Bay Museum.
[126] "Presentment of Grand Jury – Court of General Sessions, District of Manitoulin," Foreman Robt Thorburn to Judge McCallum, June 1902, Gore Bay, *Manitoulin Reformer*, 6 June 1902.
[127] Ibid.
[128] Ibid.
[129] Ibid.

drunkenness and from utter demoralization, laws should be vigorously enforced."[130] The two-storey Gore Bay Jail certainly had larger facilities with which to address the concerns of the Grand Jury than the Manitowaning or Little Current lock-ups.

Despite the outspoken diligence of the Grand Jury, the overall provincially-reported numbers of commitments to the Gore Bay Jail tend to be relatively low until the Manitowaning and Little Current lock-ups begin to deteriorate. Ron Brown found that one hundred ten persons were placed in the Gore Bay cells in 1910.[131] More than ninety of these committals were for "drunk and disorderly."[132] Statistics published by the Inspector of Prisons and Reformatories are much lower: in the year ending 30 September 1910, sixteen prisoners, in the year ending 31 October 1911, fifteen prisoners.[133] Archival records are apt to be incomplete and government reporting of records can be inconsistent; however, the answer to this particular incongruity may be found in the spatial organization and representations of the Gore Bay Jail itself.

Immediately beyond the ground floor entrance to the jailkeeper's section of the Gore Bay Jail lies a small intermediate section with two cells. The remaining four cells for male prisoners lie beyond a heavy door. The two cells, physically closer to the settler jailer and his family, may have housed provincially-reported settler prisoners while the set of four cells housed "Indian" inmates. In his first report, the Ontario Inspector of Prisons made a point of instructing county councils that incarceration was an "important branch in the science of government" in which classification was needed and the "indiscriminate mixing" of inmates was an "evil that no civilized community should tolerate."[134] While, especially in larger institutions, inmates might be classified according to the type or severity of their offence, in the small gaols of the counties to which the Inspector referred, indigenous and settler populations were the predominant socio-legal categories. The racialized segregation of inmates was given scientific weight through calculation since legislation created additional categories of crime and punishment for "Indians" and "non-treaty Indians." Despite the prevalence of lock-ups on Manitoulin Island, the scrutinizing eye of the law was preoccupied with this criminalized indigenous class rather that any widespread crime

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[130] "Presentment of Grand Jury," *Manitoulin Reformer*, 6 June 1902, Op. Cit.
[131] Brown, 2006, Op. Cit.:31-33.
[132] Ibid.
[133] Province of Ontario, *Forty-Second Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 30th September 1909,* (Toronto: LK Cameron, 1910); Province of Ontario, *Forty-Third Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario for the Year Ending 30th September1910,* (Toronto: LK Cameron, 1911).
[134] Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868,* (Toronto: Hunter, Rose & Co., 1869):2.

spree among the settler population.

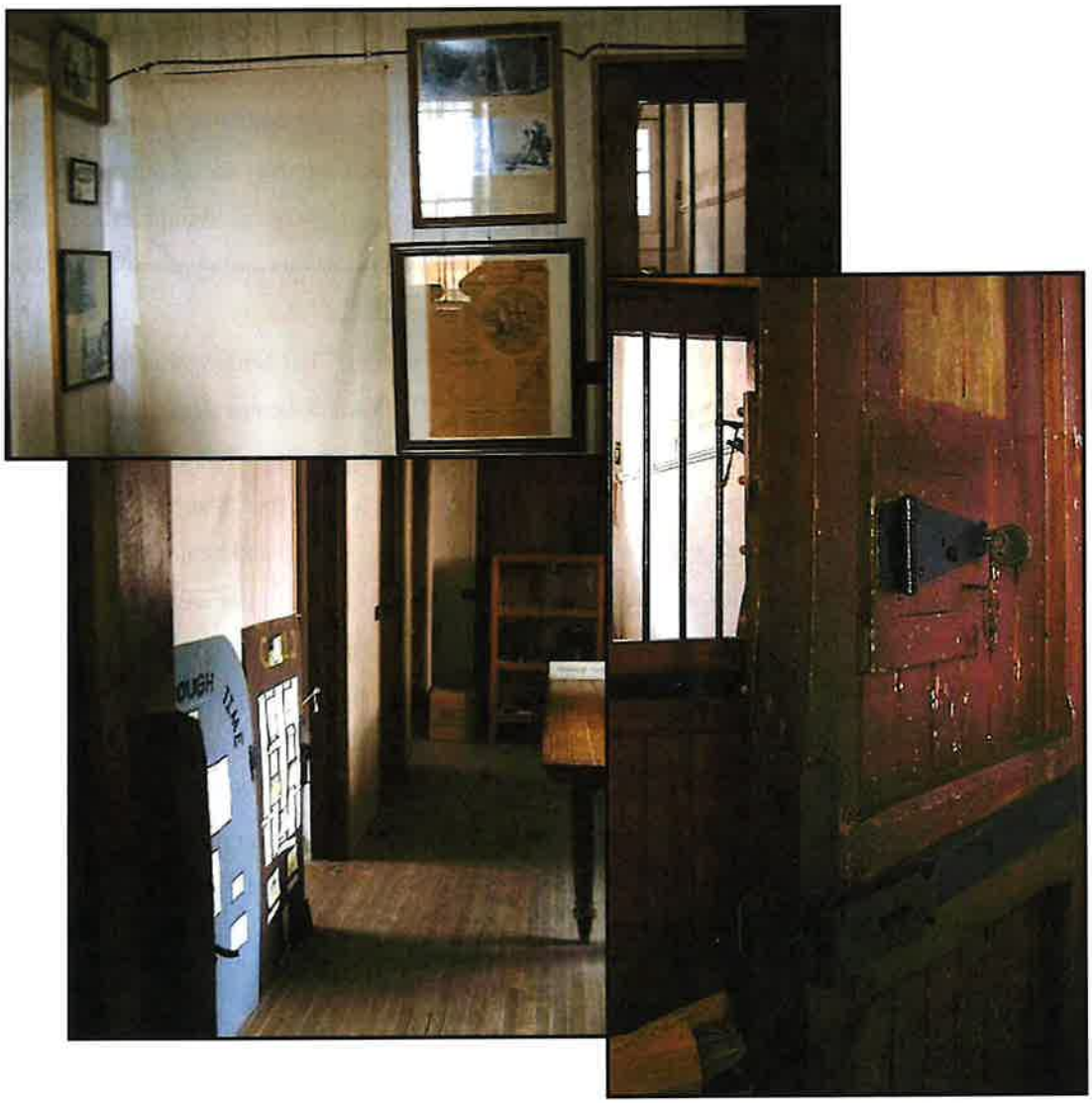

Figure 45: The Spatial Organization of the Gore Bay Gaol
(Top Left) Two cells near the jailkeeper's area, (Right) Heavy door, (Lower Left) Four cell area with prisoners' table

A 1903 sitting of the Court of General Sessions for the Manitoulin District opened with Crown Attorney Murray's congratulations that there were no criminal proceedings to bring before the court.[135] Despite its gentle workload, the sitting had to take place in order that a Grand Jury be

[135] The one prosecution that occurred since the last sitting had been dispensed of through the Court of Assizes. "The District Court – No Criminal Cases – The Judge's Address to the Grand Jury," *Manitoulin*

maintained in the District. In his address to the Grand Jury, Judge McCallum observed that Manitoulin was "settled by a respectable class of people."[136] McCallum reminded the Grand Jury of their wide investigative powers and invested them with the responsibility of preventing crime.[137] The 1903 Grand Jury also monitored the Gore Bay District Jail and found the small building clean yet inadequate.[138] The Grand Jury found it deplorable that there was a "necessity" to imprison "insane persons" in jails, especially when the Gore Bay lock-up presented "close quarters and lack of proper accommodation and opportunities for receiving fresh air and exercise," conditions that made a "lengthy confinement injurious and oppressive."[139] They agreed that a new jail with a jailkeeper's residence was needed.[140]

An individual of the West Bay Band (M'Chigeeng First Nation) was thought to be displaying symptoms of insanity in October 1907.[141] He was taken to Gore Bay and "lodged or rather held over" until he could be seen by the Police Magistrate.[142] The individual was released after a "medical man" of Gore Bay examined him and declared that "there was nothing wrong with the Indian."[143] During the next week, the individual "cut up and behaved very badly on the reservation."[144] When he was once again arrested, he was taken to Indian Agent Thorburn at Gore Bay who sentenced him to thirty days in jail and ordered the Indian Constable to transport him to the Manitowaning Lock-up.[145] The West Bay individual had only been in the lock-up for a few days when Jailkeeper Samuel Walker and the Provincial Constable were both required to attend to him.[146] It was Walker who referred the matter to the Crown Attorney at Gore Bay. The Crown Attorney ordered two medical doctors to examine the imprisoned man. The West Bay man was declared insane, taken to Mimico Asylum by the Dominion Constable, and maintained there by the funds of the West Bay Band until his death that Spring.[147] Although Deputy Minister of Justice Newcombe did not hold Indian Affairs "legally responsible" for the West Bay man's

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Reformer, 22 October 1903, Gore Bay, Volume: 2, No. 25.
[136] Ibid.
[137] Ibid.
[138] "Presentment of Grand Jury," to Justice McCallum, *Manitoulin Reformer*, 29 October 1903, Gore Bay, Volume: 2, No. 26.
[139] Ibid.
[140] Ibid.
[141] Jailer Samuel Walker to Secretary of the DIA JD McLean, 19 August 1908 (Manitowaning), "Dept. of Justice Opinions – Vol. 3," 1900-1910, Op. Cit.
[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] Ibid.
[146] Ibid.
[147] Ibid.

account of $14.40, for a total of thirty-six days in the Manitowaning Lock-up, he presented the DIA with the choice of assuming this cost in the same way that they had dispensed the cost of the asylum.[148]

The Grand Jury occasionally dealt with actual cases involving "Indians" as when the Court of Assizes in Gore Bay returned a "true bill" against a defendant versus "an Indian woman, in which the jury returned a verdict of not guilty."[149] The Courthouse at Gore Bay is still in operation.

9.5 Peroratio: Jailhouse Palimpsests

Figure 46: Curatorial Clues to the Uses of the Gore Bay Jail

Although the Gore Bay Museum is not presented as a defunct "Indian jail," material elements of the building give silent testimony to the persons it once contained. Most bluntly, the prisoners' dining table is inscribed with the messages of those who last sat around it.[150]

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[148] Walker to McLean, 19 August 1908, "Dept. of Justice Opinions – Vol. 3," Op. Cit.; Deputy Minister of Justice Newcombe to Secretary of the DIA JD McLean, 22 September 1908, (Ottawa), "Dept. of Justice Opinions – Vol. 3," 1900-1910, Op. Cit.
[149] *The Recorder*, 22 July 1909, Gore Bay.
[150] Brown, 2006, Op. Cit.:31-33.

Figure 47: Gore Bay Prisoners' Table Palimpsest[151]

Ultimately, as transportation infrastructure improved and police cells replaced government lock-ups, the Gore Bay Jail was deemed an obsolete and unnecessarily expensive facility.[152] The Gore Bay Jail was closed on 31 December 1944 and Sudbury was formally made the seat of the Gaol for the Provisional District of Manitoulin.[153] Quarters for the RCMP

[151] An image of the prisoners' table also appears in Brown, 2006, Op. Cit.:32.
[152] Deputy Attorney-General CF Magone to Deputy Minister of Citizenship and Immigration Laval Fortier, 11 June 1952, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.
[153] Deputy Attorney-General of Ontario CL Snyder to Indian Agent CR Johnston, 24 November 1944, (Toronto), "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants – Includes general correspondence re justice administration (court costs, returns of convictions, etc.)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 1, Access Code: 32; Acting Director to Indian Agent CR Johnston, 30 November 1944, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

detachment at Manitowaning were completed in 1949.[154] Regional Supervisor of Indian Agencies F Matters' concerns about the upkeep and geographical distribution of court and jail facilities on Manitoulin Island were passed on to the Deputy Attorney General of Ontario in June 1952.[155] Deputy Attorney General FC Magone replied that he had been prompted to inspect Manitoulin Island in the previous year "after having received numerous reports from the Crown Attorney, Magistrate, Provincial Police and others."[156] Magone had been unsuccessful in his persistent efforts to reinstate three provincial lock-ups at different locations on Manitoulin Island.[157] Therefore, Matters was informed that, for the purposes of Indian Affairs, he was to look to the two cells of the "modern and well equipped" new Gore Bay Municipal Building and anticipate the implementation of a plan to purchase a building for a Provincial Police Station with cells in Little Current.[158]

The importance of the provincial Manitoulin Island lock-ups is evident in the landscape; however, as this chapter makes clear, their relationships to indigenous imprisonment have been largely covered by changing governmental and legal jurisdictions. Although surrounded by town buildings, these important nineteenth-century lock-up structures maintain their tenacious presence. Where it is possible to visit these buildings, with the guidance of archival sources situated within the legal historical geographies of Manitoulin Island, assimilation through incarceration can be read through palimpsests of historical use and curatorial representation.

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[154] *Annual Report of the DIA*, 1948, Op. Cit.: 223.; *Annual Report of the DIA*, 1949, Op. Cit.: 205.
[155] For Secretary to Regional Supervisor of Indian Agencies F Matters, 18 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.
[156] Deputy Attorney-General CF Magone to Deputy Minister of Citizenship and Immigration Laval Fortier, 11 June 1952, (Toronto), "Jail Facilities on Manitoulin Island," Op. Cit.
[157] Ibid.
[158] For Secretary to Matters, 18 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.; Magone to Fortier, 11 June 1952, "Jail Facilities on Manitoulin Island," Op. Cit.

Chapter 10

Relocating Incarceration: Material Geographies of Justice

Historical-cultural geographers have long been taught to "read the landscape."[1] The material elements of landscape are signs of how places have been used; however, as Brian Osborne cautions, "places are constituted by more than materiality."[2] Geographic cyphers lead to stories. Through the everyday practices, practicalities, and absurdities of life, abstract space becomes "a social and psychic geography."[3] The glimpse of an institution conjures thoughts of standardization, depersonalization, and legitimization through governmental regulation. Jails and prisons are odd places where legal super-structures collide with overtones of social chaos. It is this uncomfortable confluence that binds carceral and indigenous historical geographies. Indigenous peoples are the First Nations to inhabit territory now claimed by the Canadian state. More profound than the vital importance of precedence is being of the land: created as part of its whole. Indigenous geographies recognize that forcible dislocation from "ethnogeographies… erodes the material and spiritual connectedness of peoples."[4] Carceral geographies look to the manipulation of space in order to effect psychological control. What then, does it mean when indigenous peoples are dislocated, and then relocated, from the lands to which they belong? Tracking the material elements of three landscapes of further indigenous relocation uncovers astounding contradictions and connections that indicate how Aboriginal peoples came to be so vastly over-represented in Canada's prisons.

10.1 Sudbury District Gaol

Although Manitoulin Island ceased to have its own District Gaol by 1945, the administration of justice continued with Indian Agents working in conjunction with Dominion Constables, Provincial Constables, and police magistrates.[5] Indian Agent CR Johnston and Police

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[1] Ed. DW Meinig, *The Interpretation of Ordinary Landscapes: Geographical Essays*, (New York: Oxford University Press, 1979).
[2] Brian S Osborne, "Landscapes, Memory, Monuments, and Commemoration: Putting Identity in Its Place," Commissioned by the Department of Canadian Heritage for the Ethnocultural, Racial, Religious, and Linguistic Diversity and Identity Seminar, Halifax, 1-2 November 2001:5.
[3] Ibid.
[4] Ibid:6.
[5] "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants – Includes general correspondence re justice administration (court costs, returns of convictions, etc.),"

Magistrate WJ Golden were in frequent correspondence.[6] In some cases, RCMP officer FG Truscott acted as prosecutor in cases before the Indian Agent.[7] It was, nonetheless, a complication to Indian Affairs that convicted prisoners had to be conveyed by the RCMP to Sudbury District Gaol.[8]

The geographical challenge of removal to the Sudbury Gaol was increased by the reality that many "Indians" sent to the Gaol lacked money. Within the legal structure of the *Indian Act*, which developed alongside Indian lock-ups, had "Indians" possessed more material resources, most would be able to answer their convictions by paying a fine rather than receiving jail time in default. Where lock-ups faded away in favour of short-stay town police cells, Indian Affairs was in a quandary: in their material poverty, the very "Indians" they sent to gaol could become stranded outside of their Indian Agents' geographical purview. Since the Sudbury District Gaol did not provide transportation home for discharged prisoners, Indian Affairs had to concede that "in cases of dire necessity" they would send a transportation warrant for railway fare to the Sudbury Gaol Governor so that prisoners could be sent on their way to Manitoulin Island.[9]

Paid employment was available off Manitoulin Island and distance from the Indian Agent could be to the advantage of "Indians" who could not afford fines levied against them. When two men from Wikwemikong were convicted under the liquor provisions of the *Indian Act* and sentenced to fines of ten dollars and costs or ten days in jail, they took evasive action.[10] The General Manager of the JJ McFadden Lumber Company wrote to Johnston from Blind River, Ontario, to tell him that the men were working for them as river drivers on the Mississaga River.[11] The men had divulged that they might be forced to return to Manitoulin because they were

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National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 1, Access Code: 32.

[6] Ibid.

[7] JA Kinney KC to [name withheld], 14 September 1945, (Gore Bay), "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants," 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

[8] Indian Agent CR Johnston to the Indian Affairs Branch, 15 March 1947, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence ," Op. Cit.

[9] Indian Agent CR Johnston to Sudbury District Jail Governor, 25 March 1947, (Manitowaning), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; Johnston to the Indian Affairs Branch, 15 March 1947, "Manitoulin Island Agency – Law Enforcement," Op. Cit.

[10] Indian Agent CR Johnston to Police Magistrate WJ Golden, 23 May 1946, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

[11] General Manager of the JJ McFadden Lumber Co Limited to Indian Agent CR Johnston, 9 May 1946, (Blind River, Ontario), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

"liable" to the Indian Agent for fines of $13.00 and $12.90.[12] The men's skills were valuable enough to the lumber company to forward a cheque for $25.90 to the Indian Agent even though they had not yet earned the full amount.[13]

A Manitoulin Island Indian Constable felt that his authority was derided when he attended a wedding dance in 1947.[14] At the dance, the constable was informed that one of the guests had a bottle of liquor in his pocket.[15] The constable informed Indian Agent Johnston,

> I at once went to take it away from him. But the bottle was filled with tea, and had purposely prepared the same, for me to take notice of it. And when it was found that was only tea, the laugh was on me by some of the crowd. – I think, Tea is alone enough evidence that he was drunk…no doubt drunk, I could smell him. and this contents of tea might have been mixed with some intoxicants as against *Indian Act* Section 2 subsection 'f' And at the same time against Section 106 of the Indian Act. As this was done in contempt with my work.[16]

The man with the tea was not the only person whom the Indian Constable thought was drunk. The sister of the groom was "very surprised" when the Indian Constable delivered a summons to her husband.[17] The sister conceded that her husband "was drinking a little bit" and did not "see why he should be taken into custody" as he had not done anything wrong.[18] The woman was extremely worried about the possibility of a jail term because there was a great deal of work to be done in caring for their livestock, she was nearing the end of a pregnancy, they had no money, and their supplies of food and firewood were depleted.[19] Moreover, the woman was already caring for a two-year-old and a three-year old and a "person just can't let the babies go hungry and cold."[20] The woman pledged that her husband would comply with the summons and attend the Indian Agent's office the next day and pleaded, "I want to ask you to let him go free."[21] Regrettably, when, within the group appearing after the dance, it was the husband's turn before the Indian Agent, Johnston did not find him credible.[22]

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[12] General Manager of the JJ McFadden Lumber Co Limited to Indian Agent CR Johnston, 9 May 1946, (Blind River, Ontario), "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[13] Ibid.
[14] [Indian Constable] to Indian Agent CR Johnston, 17 January 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[15] Ibid.
[16] Ibid.
[17] to Indian Agent, 17 January 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] to Dr, 24 January 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.

Apparently, the couple's pleas of innocence went against the wife's desire to keep the man out of jail because all were fined ten dollars and costs or ten days in gaol; however, he alone was remanded for a week.[23] When she learned of this, the woman travelled through the winter weather to Manitowaning to see the Indian Agent.[24] She then became ill and asked the Manitowaning doctor to help her.[25] Dr. Simpson intervened and asked that the man be given time to pay the fine.[26] Of the nine individuals tried on the same day for infractions against the liquor provisions of the *Indian Act*, only the man with the bottle of tea in his pocket, was not convicted.[27] Presumably, he was the one person who could prove that what he was drinking at the wedding dance was not liquor. Cases brought under the *Indian Act* usually resulted in convictions.[28]

Manitoulin Crown Attorney JA Kinney was not particularly sensitive when he received another woman's letter of complaint while the Provincial Constable was on holiday; however, he discerned that the "proper thing to do" was to lay a charge of assault against the woman's husband.[29] Unfortunately, Kinney also wrote to the husband notifying him,

> I have a complaint from your wife about you beating her up. The Provincial Police is away at present and I think possibly the matter can stand till the Police returns to make his investigation. However, I desire you to understand that this complaint has been made and if from now on you assault or beat your wife you may get less consideration from the Court when the matter is disposed of. I want you to understand that you must keep your hands off her from now on. If you have any complaints to make, you make them to the Police and not take the law into your own hands.[30]

Kinney was initially unsure of the woman's status yet he gathered more information and prepared paperwork before he again wrote to the woman with further instructions later that day.[31] The Police Court was meeting at Manitowaning Orange Hall on 25 September and he had decided to attempt to dispose of the case there.[32] The woman was directed to take a document of information

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[23] to Dr. 24 January 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; Informations, "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[24] Ibid.
[25] Ibid.
[26] Note on envelope to Dr. Simpson in Manitowaning, "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[27] Informations, "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[28] See Appendix D.
[29] JA Kinney KC to [name withheld], 14 September 1945, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[30] Ibid.
[31] Ibid.
[32] Ibid.

to the Justice of the Peace at Manitowaning so that she could swear to it by oath.[33] If the alleged assault occurred on-reserve, the Indian Agent would ask the Indian Constable to serve summonses; however, if the offence occurred in town, the "Local Constable" would be used.[34] The woman was warned that if she was a "treaty Indian" she had "better go and see" the Indian Agent before attempting to contact any other Justice of the Peace.[35] Kinney offered his help to the woman in getting any potential witnesses to testify in Court and was willing to offer summonses for their appearance even though his general lack of engagement with "Indian" cases seeps through his tone in telling her

> Give me your first name 'Mary' or 'Agnes' or whatever it is when you write me and tell me the date if there was more than one fight and let me have the full particulars of the trouble but never mind writing me all about your whole life's troubles. I do not want to hear that. I just want to know what happened when you claim he assaulted and hit you occasioning actual bodily harm.[36]

Kinney was willing to help, albeit reluctantly, in a case that he clearly would normally perceive as beyond the pale of his practice.

In 1945, a "young man" from Manitoulin Island was accused of murdering his father.[37] Indian Agent CR Johnston informed the Indian Affairs Branch that the accused man was a former student of the Residential School in Chapleau, Ontario.[38] Indian Agent Johnston only inquired about securing legal counsel for the young man after a preliminary hearing before Magistrate WJ Golden in the Municipal Hall of Sheguiandah resulted in committal for trial in a higher court.[39]

Although Crown Attorney JA Kinney was an early nomination of Indian Affairs for defense counsel in the young man's case, Johnston wondered whether Kinney's prosecutorial position made him ineligible for the job.[40] Subsequently, Johnston informed Indian Affairs that Kinney agreed that he could not act as lead defense and he would be assisting Sudbury Crown

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[33] Kinney to [name withheld], 14 September 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Indian Agent CR Johnston to Indian Affairs Branch, 30 August 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Indian Agent CR Johnston to Indian Affairs Branch, 2 November 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[38] Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[39] Johnston to Indian Affairs Branch, 30 August 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[40] Indian Agent to JA Kinney KC, 25 September 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

Attorney ED Wilkin with his case.[41] Since Kinney and Police Magistrate Golden were the "only qualified men" on the Island, James Cooper of Sudbury was engaged as counsel for the accused young man.[42] In another case, Indian Affairs declined to provide counsel to a member of the Manitoulin Island Unceded Band even though the Band Council resolved that counsel should be requested and a candidate was already nominated.[43] The preliminary charge against that man was murder; however, the charge had been reduced to manslaughter in a Magistrate's hearing in Wikwemikong.[44] The Department of Indian Affairs was only obligated to hire counsel in murder cases.

In the murder case, although the Gore Bay Jail had recently closed and the accused young man was being held in the Sudbury District Gaol, the trial itself could still be held at the Gore Bay Courthouse.[45] Johnston recounted, according to the accused's own testimony, and that of the

> two Indians living with him, he had not slept well for several weeks, and he immediately went home and slept after shooting his father, which in my opinion is not the actions of a person with normal mentality. Mr. J.M. Cooper, I thought, put up a very good defence, and Dr. McLarty, a mental expert from Toronto, pronounced him a mental case, while Dr. Tennant also of Toronto pronounced him not insane, although it appeared to me he admitted that he would consider it a form of insanity had [the accused] been a whiteman.[46]

When the murder trial resulted in a conviction, Indian Agent Johnston furnished Indian Affairs with the thought that they might endeavor to commute the sentence of the convicted man of whom, previous to the trial, he had little knowledge yet now estimated was "about 33 years of age."[47] The man had attended residential school in Chapleau for eight years and spoke "fairly good" English.[48] He was "temperate in habits" and appeared to the Indian Agent to be very

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[41] Indian Agent CR Johnston to Indian Affairs Branch, 9 October 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[42] Ibid; Indian Agent CR Johnston to James Cooper KC, 17 October 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[43] to Indian Agent Johnston, Copy of resolution, 11 July 1946, (Wikwemikong), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Director to Indian Agent CR Johnston, 19 August 1946, (Ottawa), "Manitoulin Island Agency – Includes General Correspondence ," Op. Cit.
[44] Indian Agent CR Johnston to Indian Affairs Branch, 15 August 1946, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Indian Agent CR Johnston to the Secretary of the Manitoulin Island Unceded Band, 22 August 1946, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[45] Indian Agent to Kinney, 25 September 1945, Op. Cit.
[46] Indian Agent CR Johnston to Indian Affairs Branch, 2 November 1945, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[47] Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[48] Ibid.

reserved.[49] Nevertheless, Johnston assessed that the man's "mentality was considerably below normal, that he was suffering from a physical ailment, as well as a delusion that his parents were responsible for his illness, which belief was aggravated by those of his own tribe with whom he associated and sought advice."[50] From his Sudbury Gaol cell, the man told Johnston that "he could not have lived very long if he did not put a stop to his parents bear walking, a term the Indians use for witchcraft."[51] For the Indian Agent, while murder was certainly not condoned, demonstrations of what appeared to be assimilation to Indian Affairs' ideals sat alongside physical and mental illness as mitigating circumstances.

In addition to relocations to residential schools, children convicted of crimes could be sentenced by the Police Magistrate to the reformatory under the *Training Schools Act*. In the Gore Bay Courthouse, Magistrate Golden convicted three boys from the Manitoulin Island Unceded Reserve, aged ten to twelve years old, of wilful damage and theft.[52] Golden ordered that the Children's Aid Society take the children to the St. John's Boys' Training School in Toronto where they would "upon admission become a ward of the training school" until they came of age.[53]

Although, by 1946, the general position of Indian Affairs was that they were not prepared to "assume any costs in connection with a prisoner while he is still in custody on a charge under the Criminal Code, because such costs are recognized as the constitutional responsibility of the province, and any departure from that principle would create a precedent, which would be undesirable," in the case of the Manitoulin Island boys, the municipality deigned to assume the expense of the children's maintenance in conformity to the *Training Schools Act* was the

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[49] Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[50] Ibid.
[51] In 1997, Leon Jacko was acquitted for "clubbing to death another Anishnabe man" named Ron Thompson. Thompson's death was "ruled an act of self-defence motivated by the accused's belief that the victim was a Bearwalker." Deena Rymhs, *From the Iron House: Imprisonment in First Nations Writing*, (Waterloo: Wilfred Laurier Press, 2008):127; Johnston to Indian Affairs Branch, 2 November 1945, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[52] His Honour Magistrate WJ Golden in Chambers at Gore Bay, Ontario, In the Matter of [name withheld] Training Schools Act, 26 June 1946, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; District Supt WH Hogle to Indian Agent Johnston, 4 July 1946, (Sudbury), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[53] Magistrate WJ Golden, 26 June 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Excerpts from the *Training Schools Act*, 1939, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

Department of Indian Affairs.[54] Bernard Neary, Superintendent of Welfare and Training, was somewhat baffled by the boys' arrival in Toronto. He asked Indian Agent Johnston, "Were you consulted before the boys were admitted to the Institution?"[55] Neary did not know the boys' ages and could not determine whether they were "recognized as Indians" by Indian Affairs.[56]

In a different case where housebreaking appeared to have been committed between "Indians," it was not taken as seriously. In response to a complaint, Indian Agent Johnston advised,

> this is actually a case for the Provincial Police, but seems a trivial matter to bring the Police from Gore Bay at this time of year. [The Indian Constable] has a commission from the Royal Canadian Mounted police but their work is primarily in connection with intoxicants and are not allowed to handle cases that come under the criminal code. You may report to Mr. Louis Needham, the Provincial Constable at Gore Bay, if you wish, but you should be sure that you can prove your case or you may have costs of the court to pay.[57]

While the three boys were indeed "recognized" by Indian Agent Johnston, they first entered into a realm of law enforcement beyond his sole control when they, allegedly, "broke into a vacant white farm house adjacent to Manitowaning."[58] When the Provincial Police investigated the housebreaking, the boys were thought to have admitted their guilt.[59] The children were awaiting trial on this charge when they allegedly broke into a house in Manitowaning.[60] The boys were tried in the Manitowaning Indian Affairs Office in the presence of Indian Agent Johnston and, since their fathers were away from the reserve and their mothers were unable to make restitution, the boys were tried on the same day in the Gore Bay Courthouse and sentenced to be taken away to the Training School.[61]

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[54] Magistrate WJ Golden, 26 June 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.; Johnston to Indian Affairs Branch, 24 July 1946, Op. Cit.; Director to Indian Agent CR Johnston, 11 June 1946, (Manitowaning), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[55] Superintendent of Welfare and Training Bernard F Neary to Indian Agent CR Johnston, 11 July 1946, (Ottawa), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[56] Ibid.
[57] Indian Agent CR Johnston to [name withheld], 25 February 1947, (Manitowaning), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; [Name withheld], 15 February 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.; [Name withheld], 11 February 1947, (Wikwemikong), "Manitoulin Island Agency – Law Enforcement," Op. Cit.
[58] Johnston to Indian Affairs Branch, 24 July 1946, "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.
[59] Ibid.
[60] Ibid.
[61] Ibid; His Honour Magistrate WJ Golden in Chambers at Gore Bay, Ontario, In the Matter of [name withheld] *Training Schools Act*, 26 June 1946, (Gore Bay), "Manitoulin Island Agency – Includes General Correspondence," Op. Cit.

10.2 Shingwauk: Incarceration and Assimilation in a Residential School

Residential schools were acute sites of segregation and assimilation where children were sequestered from their parents and, often, subjected to abuse that caused lasting trauma to indigenous persons, families, and communities.[62] Melissa Williams reflects that, for many, the residential school system is responsible for a "cycle of despair" that originated in childhood abuse and spread under the influence of poor living conditions, substance abuse, and the further perpetuation of violence.[63]

The North-West conflicts of 1869-70 and 1885 were fodder for those who believed that residential schools could be an expedient method of social control as indigenous children would be, in effect, "hostage" to the state.[64] John Milloy's *A National Crime* is highly critical of the poisonous partnerships between government and church denominations that identified children as malleable targets of assimilation.[65] Although the Catholic, Presbyterian, United, and Anglican Churches ran residential schools, they did so in an uneasy partnership with the Federal Government which, for the most part, provided the majority of funding, set standards of care, acted in a supervisory role, and usurped parental guardianship of "Indian" children through the *Indian Act*.[66] Despite their educational idioms, residential schools were intended to put indigenous children on a trajectory towards Christianity, agrarian lifestyles, and industry. A great deal of children's attention was directed towards assimilative work and religious instruction rather than to secular study. The "residential" descriptor of these schools was seen as essential to their success: they ascended over day schools because of the belief that indigenous children had to be separated from their families and communities in order to achieve assimilation. In 1911, the

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[62] Julian Walker, *The Indian Residential Schools Truth and Reconciliation Commission*, 11 February 2009, Library of Canada Legal and Legislative Affairs Division:6; Sylvia S Barton et al., "Heath and Quality of Life of Aboriginal Residential School Survivors, Bella Coola Valley, 2001," *Social Indicators Research,* 73, (2005):295-312; Noel Dyck, "Tutelage, Resistance and Co-Optation in Canadian Indian Administration," *Canadian Review of Sociology & Anthropology,* 34(3), (1997):333-48; Fern Elgar, "A Comparative Study of Native Residential Schools and the Residential Schools for the Deaf in Canada" (Carleton University, 1997); Dian Million, "Telling Secrets: Sex, Power and Narratives in Indian Residential School Histories," *Canadian Women Studies,* 20(2), (2000):92; Derek G Smith, "The 'Policy of Aggressive Civilization' And Projects of Governance in Roman Catholic Industrial Schools for Native Peoples in Canada, 1870-95," *Anthropologica*, 43(2), (2001):253.

[63] Melissa S Williams, "Criminal Justice, Democratic Fairness, and Cultural Pluralism: The Case of Aboriginal Peoples in Canada," *Buffalo Criminal Law Review,* 5(45), (2002):468.

[64] John S Milloy, *A National Crime: The Canadian Government and the Residential School System, 1879-1986*, Manitoba Studies in Aboriginal History XI, (Winnipeg, Manitoba: The University of Manitoba Press, 1999):32.

[65] Ibid.

[66] Ibid:xiii.

Department of Indian Affairs made school attendance for Aboriginal children compulsory, adopted formal contracts with the churches, and formed a policy of favouring residential schools over all other places of education.[67]

Just as cases of perceived or physical violence are pointed to in the contemporary media as justification for the disproportionately high rate of imprisonment among Aboriginal peoples, proponents of the residential school system justified its inception by pointing to what they interpreted as dangerous "criminal" tendencies within indigenous communities such as the unrest in the western territories.[68] Deplorable conditions meant that some Aboriginal children were plainly suffering to the degree that they "might not live for long, but it seemed that the principal was determined that, with slates and chalk in hand, the children would die on the road to civilization."[69] Duncan Campbell Scott, Canadian poet, Deputy Superintendent General of Indian Affairs, and key designer of the residential school system, responded to criticism by admitting that the abusive circumstances experienced by child residential school "inmates" in "the early days" made it "quite within the mark to say that fifty per cent of the children who passed through these schools did not live to benefit from the education which they had received therein."[70] Setting aside this horrific statistic, Scott declared that the true danger was that students might degrade to the "level of reserve life" in the instant that they were reunited with their parents.[71] Scott mourned that "relapse" was common and "promising pupils were found to have retrograded and to have become leaders in the pagan life of the reserves, instead of contributing to the improvement" of their bands.[72]

While Milloy observes that, during the period of "integration for closure" following the Second World War and the 1951 *Indian Act*, "Indian" adults were seen as having parental ability and responsibility, long delays in the process of closing residential schools were due to Indian Affairs' concern that indigenous persons who had been taken away from their parents and raised in the appalling conditions found in many residential schools would have difficulty in parenting

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[67] Milloy, 1999, Op. Cit.:71.
[68] The 1857 *Bagot Commission Report* recommended that Aboriginal children be "civilized" by instilling "industry and knowledge" in off-reserve schools where they would be removed from what was seen as the negative influences of their homes and communities. Ibid:13-17, 31-32.
[69] Duncan Campbell Scott, "Indian Education – The Present Legal Position of the Indians," *Canada and Its Provinces*, Volume: 7, *Political Evolution II*, Ed. A Shortt, (Toronto: University of Edinburgh Press, 1913):615; Milloy, 1999, Op. Cit.:99.
[70] Scott, 1913, Op. Cit.:615.
[71] Ibid.
[72] Ibid.

their own children.[73] The last federally-run residential school, the Gordon School in Saskatchewan, closed in 1996.[74]

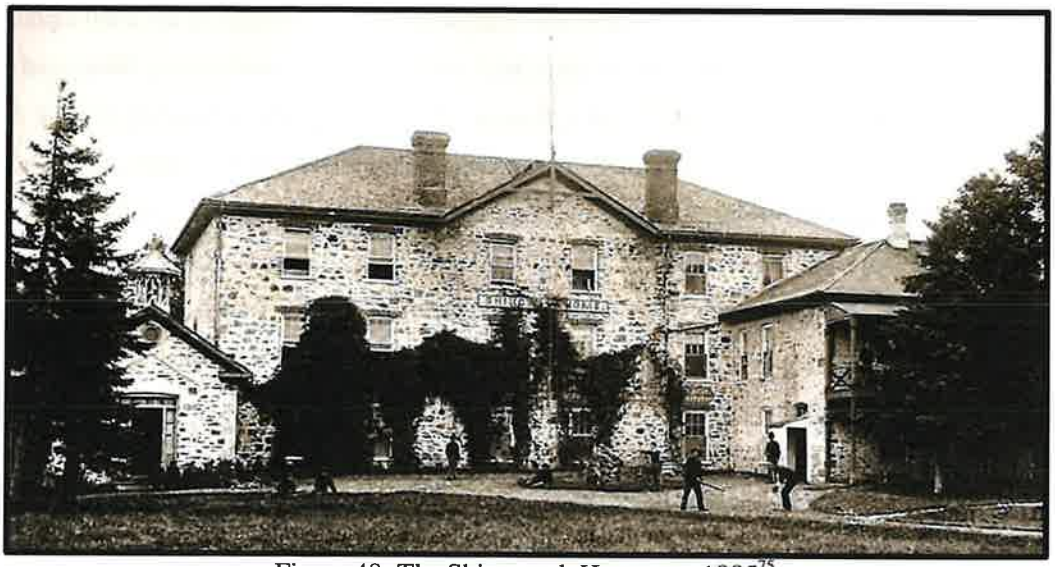

Figure 48: The Shingwauk Home, ca. 1885[75]

The inclusion of lock-ups in residential schools demonstrates the formidable union of incarceration and assimilation. Principal EF Wilson of the Shingwauk Home for Boys and the Wawanosh Home for Girls made a point of removing children because it was seen as the "wisest course, to take Indian children entirely away from home influences for their education.[76] The

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[73] Milloy, 1999, Op. Cit.:189, 197, 211, 212, 220.

[74] CBC, "A timeline of residential schools, the Truth and Reconciliation Commission," 16 May 2008, <<http://www.cbc.ca/news/canada/story/2008/05/16/f-timeline-residential-schools.html >>

[75] Adapted from National Archives of Canada, Copy negative PA-182262, Box SC 622, Other accession No. 1991-219, NPC, Indian Industrial Schools Album 2, Copyright: Expired.

[76] The Aboriginal Healing Foundation states that, from its start in Sarnia in 1877, the Wawanosh Home for Girls was merged with, and brought to the site of, the Shingwauk Home in 1934; however, early documents show that the Wawanosh Home for Girls was operating in Sault Ste. Marie. The combined residential school closed in 1971. "The Wawanosh Home for Indian Girls, Sault Ste. Marie, Ontario," "Sault Ste. Marie – Reverend EF Wilson of the Shingwauk Home Encloses a Form of Agreement Signed by the Parents of Indian Children for Admission; Also an Extract from the Code of Regulations," 1877, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2023, File: 8548, Access Code: 90; "Cape Croker Agency – Requisition of William Johnston. A Brother-in-law of the Walker Children Now at the Shingwauk and Wawanosh Homes in Sault Ste. Marie, to Send Some Money Out of Their Annuity to Pay Their Fares Home When the Schools Close for the Summer Holidays," 1889-1891, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 2466, File: 96,536, Access Code: 90; Aboriginal Healing Foundation, Directory of Residential Schools in Canada, (Ottawa: Aboriginal Healing Foundation, 2007): 22; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1887,* (Ottawa: Maclean, Roger & Co., 1888):24-28.

original "substantial buildings" of the Shingwauk School complex were erected on the Garden River Reserve on the north shore of Lake Huron.[77] Six days after the Shingwauk School opened in September 1873, it was completely destroyed by fire.[78] When the Anglican missionaries resolved to immediately begin again in Sault Ste. Marie, the DIA contributed one thousand dollars to the building and pledged to support a maximum of twenty students at sixty dollars each.[79]

In differing temporal and geographical circumstances, indigenous children from Manitoulin Island attended day schools or the Roman Catholic Wikwemikong Residential School on the island while others were removed to the Roman Catholic Residential School in Spanish, on the north shore of Lake Huron.[80] Children who attended the various Manitoulin day schools appeared, to the DIA, to be at a disadvantage because their parents would take them out of school in order that they might gain an indigenous education in sugar-making, planting, berry-gathering, and harvesting.[81] In 1877, Phipps found that some of the "Indian teachers" who had been hired to teach in the day schools were teaching "almost exclusively the Indian tongue."[82] Phipps was unequivocal in his opinion that "no material advance in the educational status of the children can be expected until intelligent White teachers are employed, and greater prominence is given to the English language in the schools."[83] As Principal Wilson conducted journeys to collect students for the Shingwauk and Wawanosh Homes, he shared Phipps' lack of appreciation for indigenous

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[77] Department of the Interior, *Annual Report of the Department of the Interior for the Year Ended 30th June, 1874,* Part 2, (Ottawa: Maclean, Roger & Co.):4.
[78] Aboriginal Healing Foundation, 2007, Op. Cit.: 22; *Annual Report of the Department of the Interior,* 1874, Op. Cit.:4.
[79] *Annual Report of the Department of the Interior,* 1874, Op. Cit.:4.
[80] The Roman Catholic Wikwemikong Day School of Manitowaning became a residential school in 1879 and closed in 1963. The Roman Catholic Spanish Residential School opened in 1883 and closed in 1965. Aboriginal Healing Foundation, 2007, Op. Cit.:23; JR Miller, *Shingwauk's Vision: A History of Native Residential Schools*, (Toronto: University of Toronto Press, 1997):204; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1931*, (Ottawa: FA Acland, 1932):16; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1936,* (Ottawa: JG Patenaude, 1937):19-20; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1914,* Part H, (Ottawa: J de L Taché, 1915):xxii; Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for Department of Indian Affairs for the Year Ended March 31, 1910*, (Ottawa: CH Parmelee, 1911):288. See the Wikwemikong Residential School Album, Algoma University Archives, Residential School Photo Album Series, Shelf location: 2011-19-001, Container No.: 001, <<http://archives.algomau.ca/drupal6/sites/archives.algomau.ca/files/Wikwemikong.pdf>>
[81] Department of Indian Affairs, *Report of the Deputy Superintendent of Indian Affairs, 1877*, (Ottawa: Maclean, Roger & Co., 1878):21-22.
[82] Ibid.
[83] Ibid.

educational values.[84] Some of the students gathered for the schools came from Manitoulin Island.[85]

As Sharon Wall makes evident, elements of the "residential experience were more reminiscent of military or prison life than of domestic tranquillity."[86] In Principal Wilson's view, indigenous children had to be "thoroughly disciplined while young, to be weaned from many filthy habits."[87] On its second floor, the Shingwauk residential school contained a 12-foot 3-inch by 8-foot "lock-up" space in which to incarcerate children.[88] The daily schedule of the school included a time dedicated to the "'dispensing of justice" when children were encouraged to confess their "misconduct."[89] Children were taught to hold trial processes and act as constables and jailers yet these were not "mock" trials with fanciful punishments.[90] In the Shingwauk court of trial, three senior boys acted as constables and any boy "suspected" of stealing would be "arrested by a constable armed with a warrant from some member of… staff acting as magistrate, and… placed in the lock-up."[91] At a "convenient" time for the principal, the accused child would be brought before a jury of six pupils who would give a verdict and recommend a punishment to the presiding principal.[92] Wall describes one instance where two girls were punished by being locked up, separately, in isolation for days.[93] Such treatment "was apparently not an unusual practice."[94] A fire that broke out in 1889 was attributed to a boy who had been incarcerated in the school lock-up.[95]

Joseph, a child of Sucker Creek (Aundeck Omni Kaning), arrived at Shingwauk on 18 July 1875.[96] Although Joseph was not skilled in English when he arrived at Shingwauk, while

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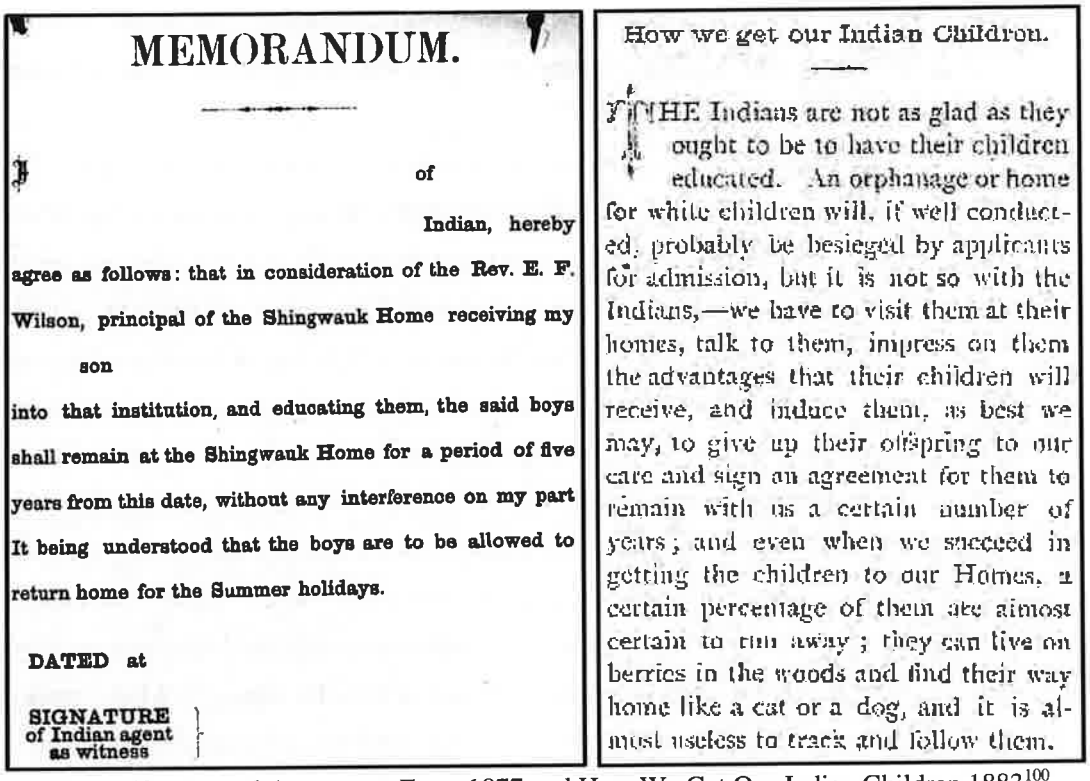
[84] *Algoma Missionary News and Shingwauk Journal*, 1 September 1883, Volume: VI, No. 3:
[85] *Annual Report of the DIA*, 1877, Op. Cit:24-28.
[86] Sharon Wall, "'To Train a Wild Bird': EF Wilson, Hegemony, and Native Industrial Education at the Shingwauk and Wawanosh Residential Schools, 1873-1893," *Left History*, 9(1), (2003):13.
[87] Edward F Wilson to the Superintendent General of Indian Affairs, 2 August 1877, (Sault Ste. Marie), "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.
[88] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 30th June 1900,* (Ottawa: SE Dawson, 1901):314.
[89] Wall, 2003, Op. Cit.: 13.
[90] Ibid.
[91] Department of Indian Affairs, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1888,* (Ottawa: The Queen's Printer and Controller for Stationery, 1889):22.
[92] Ibid: 22.
[93] Wall, 2003, Op. Cit.:13.
[94] Ibid.
[95] Ibid:23.
[96] The Shingwauk Residential Schools Centre, Algoma University Archives, Edward F Wilson Fonds, Photograph Album Series, 1870-1893, Shelf location: 2010-048-001, Container No.: 001, <<http://archives.algomau.ca/drupal6/node/17395>>

there, he became well-versed in several subjects and trained to be a teacher.[97] A contemporary of Joseph's, David, first arrived at Shingwauk from his home in Sheguiandah in 1874.[98] David trained to be a bootmaker; however, in the summer of 1877, "quiet and persevering" David left Shingwauk Residential School and never returned.[99]



MEMORANDUM.

I, of

Indian, hereby agree as follows: that in consideration of the Rev. E. F. Wilson, principal of the Shingwauk Home receiving my son into that institution, and educating them, the said boys shall remain at the Shingwauk Home for a period of five years from this date, without any interference on my part It being understood that the boys are to be allowed to return home for the Summer holidays.

DATED at

SIGNATURE of Indian agent as witness

How we get our Indian Children.

THE Indians are not as glad as they ought to be to have their children educated. An orphanage or home for white children will, if well conducted, probably be besieged by applicants for admission, but it is not so with the Indians,—we have to visit them at their homes, talk to them, impress on them the advantages that their children will receive, and induce them, as best we may, to give up their offspring to our care and sign an agreement for them to remain with us a certain number of years; and even when we succeed in getting the children to our Homes, a certain percentage of them are almost certain to run away; they can live on berries in the woods and find their way home like a cat or a dog, and it is almost useless to track and follow them.

Figure 49: Parental Agreement Form 1877 and How We Get Our Indian Children 1883[100]

Principal Wilson explained the means by which he secured pupils in a newsletter for his ecclesiastical district. Copies of parental agreement forms were sent to Phipps and other Indian Agents in order that they might use their "moral influence" to enforce the documents.[101] Surely the judicial authority of Indian Agents compounded the threat.[102]

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[97] The Shingwauk Residential Schools Centre, Photograph Album Series, 1870-1893, Op. Cit.
[98] Ibid.
[99] Ibid.
[100] Adapted from 26 October 1877, "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.; *Algoma Missionary News*, 1 September 1883, Op. Cit.
[101] McNeill, 26 October 1877, "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.
[102] Ibid.

The material and assimilative philosophical associations between Shingwauk School and incarceration are many. Johnny, another Manitoulin Island student at Shingwauk, wrote of a small group of students' trip to Toronto to see the Semi-Centennial Exhibition.[103] In addition to the delights of the exhibition, the boys had to represent the school by speaking and singing "Indian hymns" at various events.[104] The Shingwauk boys were also taken to a gaol with four hundred prisoners where they viewed the factories where prisoners manufactured brooms, washboards, and stoves.[105] Principal Wilson was even said to have visited Big Bear in prison and promised a spot in Shingwauk for Big Bear's son.[106]

Children were locked in the Shingwauk dormitories at night, lest they escape.[107] Rather than recognizing its faults, Wilson saw escapes from the Shingwauk School as "proof" that indigenous parents must be compelled to relinquish their children at "a proper age" and keep them at the residential school for an approved period.[108] The "proud object" of the Anglican mission's voluntary work was to "raise the Indians from their present low depraded position, & place them on an equal footing with their white neighbours, to make in fact Canadians of them."[109] When students completed Wilson's program of a year-by-year transition from schoolwork to apprenticeship, he believed that they should not return to reserves but take places with "White tradesmen and so gradually do away with the idea of whitemen and Indians being distinct races."[110] In this way, the reserve system would pass away.[111] Wilson was oddly accurate in declaring, "I do not think that any amount of inducement will lead Indian parents to give up their children in a sensible way to be educated" according to his means.[112] Wilson's wish would not be granted until the 1919-1920 *Indian Act* was amended to make school attendance compulsory for children between the ages of seven and fifteen and, after three days' notice and a summary conviction, punish any parent, guardian, or adult with which a child resides, with fines of a maximum of two dollars and costs, imprisonment for ten days or less, or both.[113]

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[103] *Algoma Missionary News and Shingwauk Journal*, 1 August 1884, Volume: VII, No. 8.
[104] Ibid.
[105] Ibid.
[106] Wall, 2003, Op. Cit.:36.
[107] Ibid:13.
[108] Edward F Wilson to the Superintendent General of Indian Affairs, 2 August 1877, (Sault Ste. Marie), "Reverend EF Wilson of the Shingwauk Home Encloses a Form," Op. Cit.
[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Ibid.
[113] *An Act to Amend The Indian Act*, 1880, SC 1920, 10-11 George V, c. 50, s.1.

Shingwauk was not the only residential school to resort to carceral tactics in order to stifle resistance and assert their program of assimilation. In *A National Crime*, his eminent work on residential schools, John Milloy chronicles a school principal's attempt to use an object lesson to demonstrate the reason why so many indigenous people had such a strong aversion to the residential schools. The Reverend Charles Hives, Principal of St. George's School, sent a set of shackles to RA Hoey, Indian Affair's Superintendent of Welfare and Training.[114] A former student of his school told Hives that the shackles had been used to chain runaways to their beds.[115] A set of well-used stocks stood in St. George's playground.[116]

10.3 Prison Labour

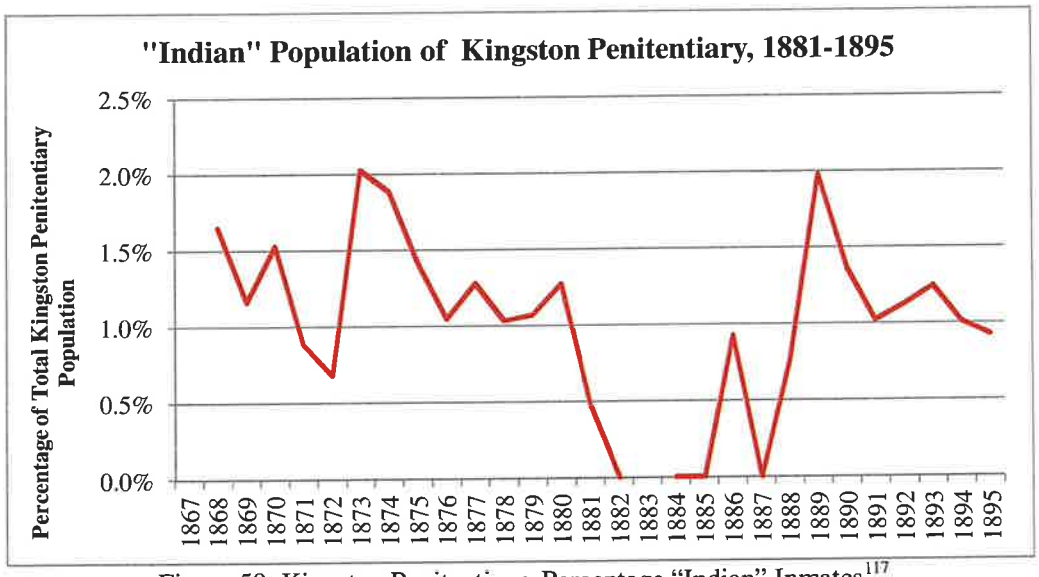

Figure 50: Kingston Penitentiary, Percentage "Indian" Inmates[117]
During the period of lock-up establishment, "Indians" were less disproportionately overrepresented in Kingston Penitentiary.

Residential schools have many material connections to carceral institutions. Historical statistics might not appear as startling as contemporary calculations of self-identified Aboriginal persons in federal penitentiaries or stark provincial breakdowns of prison populations. Nonetheless, in spite of Indian Affairs' early preference for local lock-ups, indigenous persons

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[114] Milloy, 1999, Op. Cit.:110.
[115] Ibid.
[116] Ibid:110-111.
[117] Annual Reports of the Directors of Penitentiaries of the Dominion of Canada, 1867-1874; Reports of the Minister of Justice as to Penitentiaries in Canada, 1875-1895.

have long had a significant presence in Canada's penitentiaries as well as in provincial prisons. Many "Indians" laboured under a double wardship when they became inmates of federal penitentiaries. As the sign outside of Kingston Penitentiary warns, prisons are, after all, government reserves.

Whether sentenced to "hard labour," given skills training, or assigned to rehabilitative programs, inmates in prisons throughout Canada have worked. Ted McCoy argues that, while labour was important to all prisoners, its "colonial overtones" were stronger for indigenous peoples.[118] Although prison labour has since been interpreted through philosophies of employable skills and rehabilitation, the first Ontario Inspector of Prisons criticized the municipal authorities who were expected to provide labour projects for inmates yet "looked too much for a means of profitable employment, and failing that, have furnished none at all."[119] For the Inspector of Prisons, the main purpose of imprisonment was punishment and deterrence through hard labour.[120]

Nonetheless, in the following decade, while the Department of Indian Affairs was establishing lock-ups across Canada, Manitoba Penitentiary Warden Samuel Bedson espoused the idea that his penitentiary was "an instrument of 'civilization'" and created specially-tailored religious, educational, and labour programs for indigenous inmates.[121] In the penitentiary, Bedson "ensured that they performed labour that would aid them in their new role as agriculturalists."[122] Bedson's approach was entirely in accord with Indian Affairs' practice of capitalizing on geographic restriction to apply programs of agrarian, Christian, and legal ideologies that it projected would effect the transformation of "Indian" to "white."

The wardens of other prisons, such as the Burwash Industrial Farm in Ontario and the Oakalla Prison in British Columbia also encountered "Indian" inmates as they promoted the rehabilitative effects of agrarian labour. An indigenous Manitoulin Island inmate of the Burwash Industrial Farm was asked to supply the Parole Board with details of how he would be employed before they finalized his release.[123] The imprisoned man appealed to the Department of Indian Affairs to tell the Board that he wanted to work his own farm and care for his mother and

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[118] Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada*, (Edmonton: Athabasca University Press, 2012):129.
[119] Province of Ontario, *First Annual Report of the Inspector of Asylums, Prisons, &c., for Ontario, for the Year Ending 30th September, 1868,* (Toronto: Hunter, Rose & Co., 1869):3.
[120] Ibid.
[121] McCoy, 2012, Op. Cit.:129.
[122] Ibid.
[123] Secretary of the Department of Reform Institutions Board of Parole to [name withheld], 12 June 1947, (Toronto), "Law Enforcement – Intoxicants," Op. Cit.

children.[124] In British Columbia, Indian Agents could commit convicted offenders directly into the care of the Warden of the Oakalla Prison Farm for infractions under the *Indian Act*.[125] In one instance, a father and daughter were both serving sentences, one for six months of hard labour and the other for three, for possessing intoxicants.[126] The Warden corresponded with Indian Agents about whether he held any cash for inmates.[127] Attempts were made to coordinate plans so that inmates could be met by a Vancouver Indian Agent at the time of discharge and put on boats to their reserves.[128]

The historic Kingston Penitentiary also fostered a prison farm program in which inmates could pursue agrarian skills; however, by the nineteenth century, prison labour was "expected to defray the cost of the institution, if not turn a profit" and industrial skills and processes were promoted.[129] In the early twentieth-century, a "tremendous change" of values and attitudes "swept over most civilized countries" in regard to prison management.[130] While the wardens of Dominion Penitentiaries might resort to employing inmates in breaking stone because it was less humane to enforce total idleness, they preferred that other occupations be found.[131] Penitentiaries were "now fast being regarded as industries – factories to manufacture Government material and to remake men" into better citizens.[132] The reforming spirit of prisons was to take the "depraved, neglected, diseased and crooked material received" and "turn out, as their product, good citizens, reformed and fully qualified to take their places in the world of work."[133] Following the Great War, a twentieth-century drive toward economic growth permeated discussions of prison labor. In the five years preceding the Great War, the average revenue earned through labour in the

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[124] [Name withheld], 22 June 1947, (Burwash Industrial Farm), "Law Enforcement – Intoxicants," Op. Cit.
[125] Indian Commissioner for BC WE Ditchburn to Indian Agent WM Halliday, 1 September 1926, (Victoria), "Kwawkewlth Agency – 'J – Judicial' – General correspondence re Indian offences and court cases including crime reports and correspondence with Oakalla Prison Farm, B.C. Provincial Police and RCMP (Shannon file)," National Archives of Canada, RG10: Department of Indian Affairs, Volume: 11149, Series C-V-8, File: 23 and 24, Access Code: 32.
[126] Oakalla Prison Farm Warden to Alert Bay and Vancouver Indian Agents, 28 February 1929, (Burnaby), "Kwawkewlth Correspondence with Oakalla Prison Farm," Op. Cit.; Oakalla Prison Farm Warden to Alert Bay and Vancouver Indian Agents, 2 March 1929, (Burnaby), ""Kwawkewlth Correspondence with Oakalla Prison Farm," Op. Cit.; Indian Agent WM Halliday to Indian Agent CC Perry, 12 March 1929, (Alert Bay), "Kwawkewlth Correspondence with Oakalla Prison Farm," Op. Cit.
[127] "Kwawkewlth Correspondence with Oakalla Prison Farm," Op. Cit.
[128] Ibid.
[129] McCoy, 2012, Op. Cit.:19.
[130] Department of Justice, *Annual Report of the Superintendent of Penitentiaries for the Fiscal Year Ended March 31, 1926*, (Ottawa: FA Acland, 1927):13.
[131] Ibid:12.
[132] Ibid:13.
[133] Ibid.

penitentiaries was fifty-five thousand dollars.[134] Following the War, prison labour revenue increased appreciably.

Year	Revenue
1919	$138,618.04
1920	$143,333.39
1921	$162,709.32
1922	$150,369.12
1923	$140,153.32
1924	$151,721.31
1925	$168,328.91
1926	$167,920.66

Figure 51: Revenue from Prison Labour[135]

The Department of Indian Affairs took interest when the Committee of the Privy Council approved the Minister of Justice's initiative that

> with a view to the profitable employment for the convicts at the several penitentiaries, and for the purposes of general economy, it is... expedient and advisable that any goods, articles or repairs required for the use of the Government, or of any of the departments or branches thereof, which can conveniently be manufactured, produced or made at the penitentiaries and made available where they are required for the public service should, to the extent of the capacity, be manufactured, produced or made at the penitentiaries so far as this can be done with equal economy... and that the Purchasing Commission and the various departments and branches of... Government be required to give effect to and conform with the intentions herein expressed.[136]

Law-abiding citizens could be relieved of part of their burden of taxation if penitentiaries could be turned from "commercial non-essentials" to desirable business ventures for their governments.[137] Like "Indians," penitentiary inmates were "wards of the Dominion Government" living on special governmental reserves and the Superintendent of Penitentiaries saw "no valid reason why goods required for State use, and State use only, should not be made, in so far as possible" within penitentiaries.[138]

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[134] *Annual Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:12.
[135] Adapted from *Annual Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:12.
[136] Clerk of the Privy Council: C 1760, Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 1st June 1921, "Department of Justice – Utilization of Prison Labour for the Manufacture of Goods Required by the Government," 1921-1950, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 6824, File: 494-22-1, Access Code: 90.
[137] *Report of the Superintendent of Penitentiaries*, 1926, Op. Cit.:13.
[138] Ibid:12.

When the Superintendent of Penitentiaries circulated lists of all of the products that they could furnish cheaply from prison labour, the ever-economizing Department of Indian Affairs took notice.[139] The Department of Justice expressly requested that Superintendent General of Indian Affairs Sir James Lougheed instruct his department to make purchases from the penitentiaries.[140] The penitentiary labour supply could, for example, manufacture desks in their Carpenter Shops, customized uniforms for officers as well as "Indian clothing, in fact any kind of uniform or clothing not requiring too high a class of workmanship," in their Tailor Shops, ballot boxes and rural post boxes in their Tin Shops, boots for Mounted Police in their Shoe Shops, mail bags in the Mailbag Departments, cell doors and locking bars in their Blacksmith Shops, Corn brooms in their Broom Departments, cut stone from their quarries, and "light tailoring or knitting… by employing the females whom it has been found most difficult to keep suitably employed."[141] Since the penitentiaries did not have sufficient parliamentary appropriation to purchase large quantities of material for large orders, departments wishing to place such orders had to supply the materials.[142] The Minister of Justice commented, "experience has shown that the most satisfactory method to do work for other government departments is to have the other department supply the material and the penitentiary furnish the labour, supervision, etc." as had "been done for many years with the Indian Department."[143] The physical substance of these orders testifies to the close connections between indigenous peoples transported to prisons and indigenous children removed to residential schools.

Kingston Penitentiary manufactured clothing for "Treaty Indians" every year as well as a "considerable quantity of clothing for Indian schools."[144] "Indian" inmates removed to Kingston Penitentiary could be manufacturing clothing for their own children to wear as they also sat in the assimilative carceral exile of residential schools. Cooperation between the two assimilative branches of government in the "production of supplies for Indians" continued throughout the

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[139] Clerk of the Privy Council: C 1760, Op. Cit.; Extract from a Report of the Superintendent of Penitentiaries, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[140] Department of Justice Chas J Doherty to Superintendent General of Indian Affairs Sir James Lougheed, 29 July 1921, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[141] Extract from a Report of the Superintendent of Penitentiaries, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[142] Ibid.
[143] Superintendent, Memorandum for the Minister of Justice, 13 May 1922, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[144] In 1929, Manitoba Penitentiary, British Columbia Penitentiary, and St. Vincent de Paul were also manufacturing and repairing goods for various government departments. "Re: Goods that can be made in Penitentiaries," 28 May 1929, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent, Memorandum for the Minister of Justice, 13 May 1922, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

Second World War.[145] The Acting Superintendent of Penitentiaries assured Indian Affairs' Superintendent of Welfare and Training that they would "always be glad to extend" their "resources to the limit in assisting" in their work.[146]

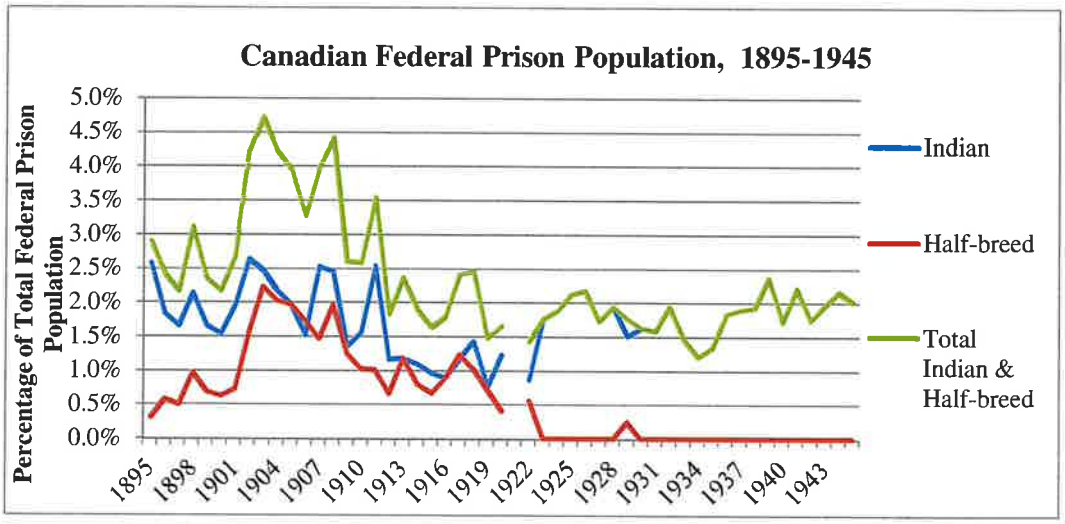

Figure 52: Canadian Federal Prison Population, Percentage "Indian" and "Half-breed"[147]

The strange economy of prison labour extended beyond the material that these children sat in to the physical material of what they sat on and laid down upon. When Inspector of Indian Agencies WS Arneil visited Kingston Penitentiary, he and the Warden discussed the manufacture of a school desk.[148] With assurances that it could be made almost entirely of wood if the difficulties of procuring adequate supplies of steel in wartime became too onerous, the Office of the Superintendent of Penitentiaries proposed a pipe-and-wood desk.[149] The Department of

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[145] Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training Indian Affairs Branch Department of Mines and Resources, 6 January 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to Inspector and Acting Superintendent GL Sauvant, 12 January 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[146] Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training RA Hoey, 14 January 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[147] Reports of the Minister of Justice as to Penitentiaries in Canada, 1895-1913; Reports of the Inspectors of Penitentiaries, 1914-1918; Reports of the Superintendent of Penitentiaries, 1919-1923; Annual Reports of the Superintendent of Penitentiaries, 1924-1945.

[148] Inspector and Acting Superintendent GL Sauvant to Superintendent of Welfare and Training Indian Affairs Branch, 6 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[149] Sauvant to Superintendent Indian Affairs Branch, 6 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

Justice provided a plan to Indian Affairs.[150] The desk could be manufactured for an estimated cost of $9.50 with a reduction of at least a dollar depending on the quantity of the order.[151]

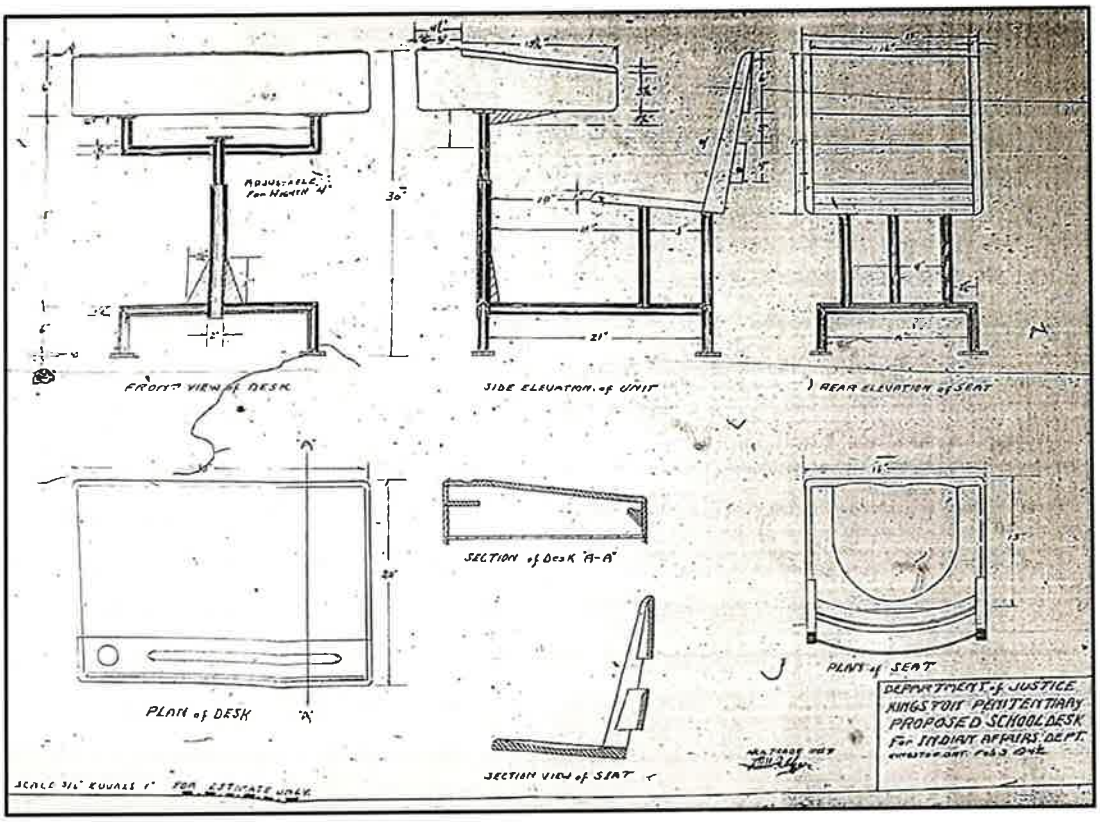

Figure 53: School Desk Manufactured at Kingston Penitentiary for Indian Affairs[152]

Inspector of Indian Agencies WS Arneil and Reverend CA Primeau examined the sagging springs of students' beds in the Spanish, Ontario, Residential School where a number of

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[150] "Department of Justice Kingston Penitentiary Proposed Schooldesk for Indian Affairs Dept.," 3 February 1942, (Kingston), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[151] A/Chief Trade Instructor Walker to the Warden of Kingston Penitentiary, 3 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to The Superintendent of Penitentiaries, 17 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[152] "Adapted from Proposed Schooldesk for Indian Affairs Dept.," 3 February 1942, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

Manitoulin Island children were enrolled.[153] Arneil proposed that the Penitentiaries Branch could manufacture new springs in order to stave off the replacement of entire beds.[154] Primeau was asked to send along one of the depressed springs so that Kingston Penitentiary's technical advisor could examine it.[155]

The manufacture of goods was not entirely uni-directional, especially during a time of war when the value of indigenous skills and materials might be better appreciated. Fredericton Indian Agent EJ Whalen was solicited to have the "Indians" in his agency make forty-eight woven wood splinter baskets for use at the Dorchester Penitentiary, New Brunswick.[156] The half-, three-quarter-, and one-bushel baskets were "required for the gathering of vegetables and roots."[157] If they worked well, more orders might come in to Whalen's Agency.[158]

At times, the labour programs of the Penitentiaries could come into competition with those of the Department of Indian Affairs. A "local Indian Agent" was sent by Indian Commissioner for British Columbia DM MacKay to the British Columbia Penitentiary with a request that they undertake to alter a "great number of Army greatcoats" into children's mackinaws.[159] Nevertheless, when Mr. Morris, Superintendent of Welfare and Training, spoke with the Acting Superintendent of Penitentiaries, he stated that the policy was "to have all repairs which can be undertaken by the Indians themselves carried out" without outside assistance.[160] The Superintendent of Penitentiaries had "little doubt" that "considerable quantities of convertible articles" would become available as a result of the troops amassing on the West Coast.[161] Incredibly, as with the proportionately high voluntary enlistment of "Indians" in the

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[153] Inspector of Indian Agencies WS Arneil to Principal at Indian Residential School in Spanish Ontario Rev. CA Primeau, 15 August 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[154] Ibid.
[155] Ibid; Inspector EL O'Leary for WS Lawson to Superintendent of Welfare and Training RA Hoey, 9 August 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Penitentiaries WS Lawson to Superintendent of Welfare and Training, 10 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Inspector of Indian Agencies WS Arneil to Principal at Indian Residential School in Spanish Ontario Rev CA Primeau, 12 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Welfare and Training RA Hoey to Superintendent of Penitentiaries WS Lawson, 12 October 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[156] Superintendent of Welfare and Training RA Hoey to Indian Agent EJ Whalen, 26 February 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[157] Ibid.
[158] Ibid.
[159] Warden of British Columbia Penitentiary Meighen to The Superintendent of Penitentiaries, 29 April 1942, (New Westminster), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.
[160] Ibid.
[161] Ibid.

Great War, many of these Second World War troops were also "Indians."[162] The Department of Indian Affairs was "insisting upon Indian women altering the surplus Army clothing themselves" for use by indigenous children.[163]

In 1944, the office of the Superintendent of Penitentiaries proposed to expand their cooperative work with the Department of Indian Affairs. In support of the Department of Indian Affairs' "policy to extend farm cultivation on the various reserves to the greatest possible extent" during the Second World War, Kingston Penitentiary supplied pure-bred Holstein bulls from their dairy herd to Indian Affairs' training section.[164] Surplus storage vegetables from penitentiaries were also transferred to the Indian Department.[165] The Superintendent of Penitentiaries intended to begin manufacturing farm and garden equipment in one of their western penitentiaries.[166] Plans were drawn up for a "Garden Hand Scuffler" to be built with prison labour in the Manitoba Penitentiary in furtherance of the agrarian efforts of an Indian Residential School. One site of carceral labour was thus used to promote assimilative labour in another site of extreme state control.

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[162] In his 1919 appendix to the *Canada in the Great War* series, Duncan Campbell Scott states that approximately 3500, or 35 percent, of eligible males of the then nine provinces of Canada enlisted in the Great War. However, in the 1927 *Annual Report of the Department of Indian Affairs*, Scott wrote that in excess of 4000 Aboriginal men enlisted. RA Hoey, Director of the Indian Affairs Branch, reported that the total Aboriginal enlistment in the Second World War was 3090. Duncan Campbell Scott, "Appendix I: The Canadian Indians and the Great World War," *Canada in the Great World War*, Volume: III, Guarding the Channel Ports, By Various Authorities, Patricia Edition, (Toronto: United Publishers Ltd., 1919):288; Duncan Campbell Scott, "Annual Report of the Department of Indian Affairs for the Year Ended March 31 1927," (Ottawa: FA Acland, 1927):9-10; RA Hoey, Director, *Canada Department of Mines and Resources Report of Indian Affairs Branch for the Fiscal Year Ended March 31, 1946*, (Ottawa: Edmond Cloutier, 1947):195; R Scott Sheffield, *The Red Man's on the Warpath: The Image of the "Indian" and the Second World War*, (Vancouver: University of British Columbia Press, 2004); Madelaine Christine Jacobs, *Committed to Paper: The Great War, the Indian Act, and Hybridity in Alnwick, Ontario*, MA thesis, Queen's University, 2004.

[163] Superintendent of Welfare and Training RA Hoey to The Acting Superintendent of Penitentiaries, 5 May 1942, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[164] Inspector for WS Lawson EL O'Leary to the Superintendent of Welfare and Training, 8 July 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[165] Ibid.

[166] Ibid.

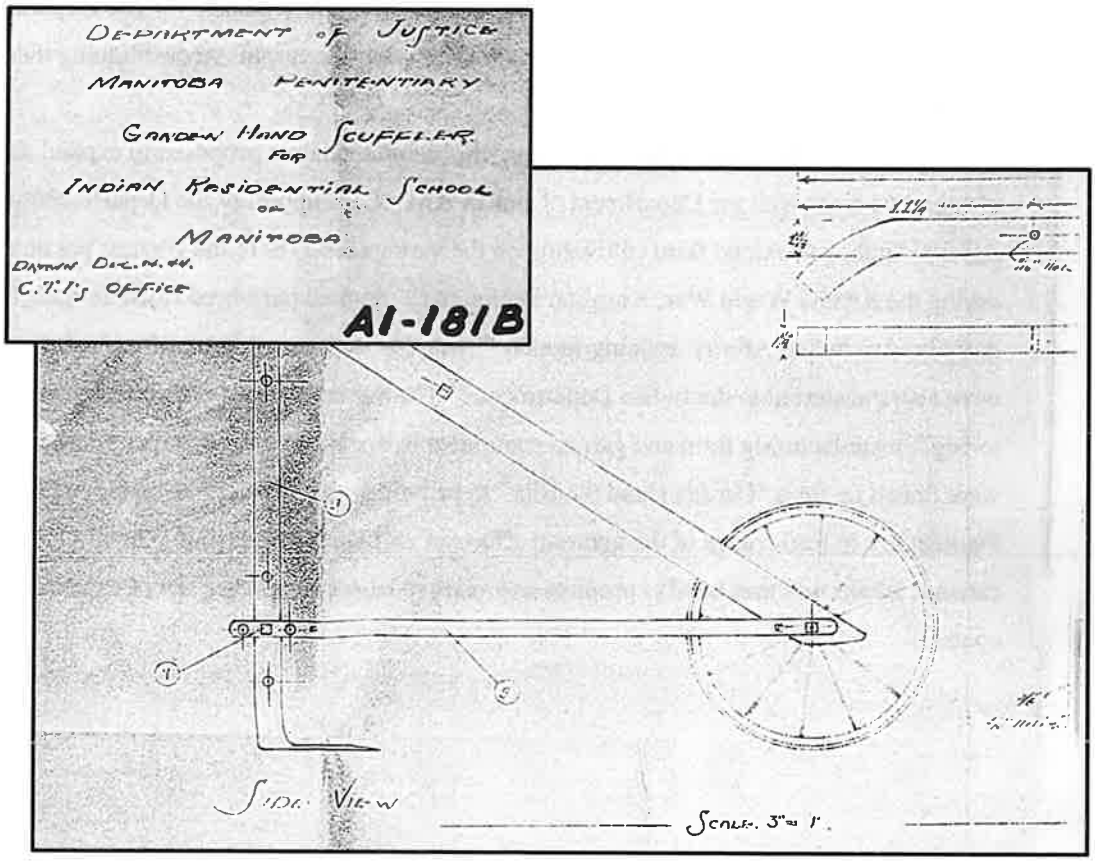

Figure 54: Garden Hand Scuffler for Indian Residential School[167]

Indian Affairs' Superintendent of Welfare and Training even invited the Superintendent of Penitentiaries to send someone from his office to visit the larger residential schools to see them in operation.[168] They later went so far as to provide the Superintendent of Penitentiaries with a list of residential schools that were geographically proximate to penitentiaries.[169]

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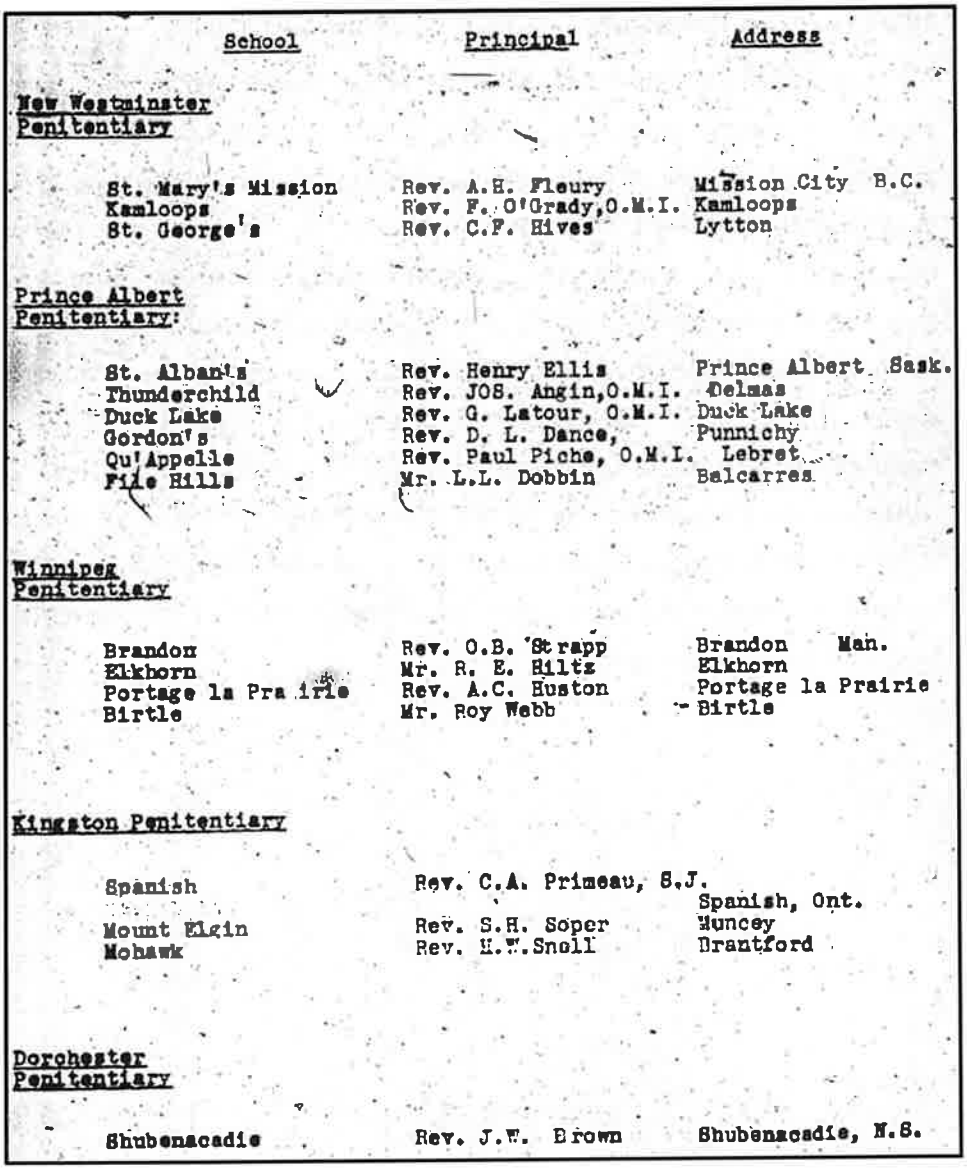
[167] Adapted from Department of Justice Manitoba Penitentiary Garden Hand Scuffler for Indian Residential School of Manitoba, "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; Superintendent of Penitentiaries GL Sauvant to Indian Affairs Branch, 28 March 1945, (Winnipeg), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[168] Inspector for WS Lawson EL O'Leary to The Superintendent of Welfare and Training, 8 July 1944, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

[169] Chief of Training Division Philip Phelan to The Superintendent of Penitentiaries, 4 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.; The Superintendent of Penitentiaries to Chief of Training Division Philip Phelan, 11 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.



School	Principal	Address
New Westminster Penitentiary		
St. Mary's Mission	Rev. A.H. Fleury	Mission City B.C.
Kamloops	Rev. F. O'Grady, O.M.I.	Kamloops
St. George's	Rev. C.F. Hives	Lytton
Prince Albert Penitentiary:		
St. Alban's	Rev. Henry Ellis	Prince Albert Sask.
Thunderchild	Rev. JOS. Angin, O.M.I.	Delmas
Duck Lake	Rev. G. Latour, O.M.I.	Duck Lake
Gordon's	Rev. D. L. Dance,	Punnichy
Qu'Appelle	Rev. Paul Piche, O.M.I.	Lebret
File Hills	Mr. L.L. Dobbin	Balcarres
Winnipeg Penitentiary		
Brandon	Rev. O.B. Strapp	Brandon Man.
Elkhorn	Mr. R. E. Hiltz	Elkhorn
Portage la Prairie	Rev. A.C. Huston	Portage la Prairie
Birtle	Mr. Roy Webb	Birtle
Kingston Penitentiary		
Spanish	Rev. C.A. Primeau, S.J.	Spanish, Ont.
Mount Elgin	Rev. S.H. Soper	Muncey
Mohawk	Rev. H.W. Snell	Brantford
Dorchester Penitentiary		
Shubenacadie	Rev. J.W. Brown	Shubenacadie, N.S.

Figure 55: Proximity of Residential Schools to Penitentiaries[170]

In 2012, having directed the dismantling of its prison farm in 2010, the Government of Canada put Canada's historic Kingston Penitentiary on the pathway to closure in favour of a new era of incarceration.

[170] Adapted from Chief of Training Division Philip Phelan to The Superintendent of Penitentiaries, 4 May 1945, (Ottawa), "Utilization of Prison Labour for the Manufacture of Goods," Op. Cit.

10.4 Peroratio: Historically Surreptitious Relationships

It might be historiographically gauche to hold government officials engaged in social reformation in the twentieth-century to contemporary standards; however, this chapter makes plain that, whatever their rationales, the cooperation of administrators, Indian Agents, priests, and judges cultivated social inequalities sown in the colonial origins of the Canadian state. At the time, they may have even been quite proud to be engaged in work that was so important to the shaping of Canadian society. Possibly, there was no need to hide the relationships between the assimilative aims of the Department of Indian Affairs, residential schools, and carceral institutions. Canada has made great strides in admitting the damage caused by the residential school system; however, it is far too easy to make a theoretical leap from abuse, soar through socio-economic inequality and, finally, alight in the staggering numbers of Aboriginal persons in Canadian prisons. Reading the landscape of three dislocations sheds light on the hitherto little known cooperations of reformers whose close relationships have become obscured by changing values and the passage of time.

Chapter 11

Conclusion

The specific historical precedents of current inequalities have heretofore been impossible to identify despite thoughtful attention to the "failure" of Canadian justice to find the causes of, and solutions for, the overrepresentation of Aboriginal persons as offenders in all aspects of state law enforcement, judicial, and correctional systems. The literature review and contextual discussion that launches this dissertation reveals that disproportionate rates of imprisonment are often theorized as the outcome of racism or as symptoms of historic trauma caused by the alienation of culture through assimilative programs of "civilization" and the myriad uncivilized abuses of residential schools. However, most academic investigations rely on sociological and criminological expertise in their efforts to find practical solutions to unconscionable disparities. As they attempt to address present circumstances and emergent challenges such as "Aboriginal gangs," altogether too few scholarly and community perspectives have dwelt on the complex historical and legal geographies behind alarming statistical data and issues. Nevertheless, in pointing to colonialism, a review of the pertinent literature provides a direction in which to seek better understanding. Perhaps it takes a skeptical eye to hypothesize that the origins of overrepresentation were much more calculated than Eurocentric assimilative systems gone horribly wrong and that indigenous persons may have been intentionally targeted as objects of criminal law throughout Canadian history.

In a political context where acknowledgement of the colonial legacies of residential schools constitutes an achievement, and the sociological indices of criminal victimization and perpetration appear on the surface of many communities, it is audacious to ask the research question, how did incarceration develop historically and geographically as a peculiarly prominent element of "Indian" interactions with the Canadian state? By putting legal geographical practice and historical geographical methods to work, this dissertation has embarked on an uncharted path of inquiry. These methods and their sources have made it possible to discover particular legal and geographic characteristics of "Indian" incarceration and trace many of their temporal vicissitudes. Through the meticulous mapping of legal relationships between indigenous persons and the Canadian state across murky historical-geographical circumstances, this dissertation renders incarceration as a cause of trauma, a tool of assimilation, rather than a more recent effect.

The remarkable landscapes of Manitoulin Island reveal a provocative legal geography of assimilative segregation and incarceration in which to pursue this inquiry. In particular historical-geographical contexts, specific mechanisms distinguished indigenous relationships with state law. Chapter Three critically assesses the use of legal instruments to contain indigenous peoples, extinguish Aboriginal title, and secure new territories for empire. With land, resources, and Eurocentric conceptions of order at stake, indigenous peoples seemed disturbingly anachronistic. The creation of colonial territories under European control was legitimized by postulating that indigenous lands appended by empire were not inhabited by "civilized" peoples with organized social systems and principles of law. Sir Francis Bond Head's plan to use Manitoulin Island as a hospice for what appeared to British authorities to be a disappearing "race" of indigenous peoples may seem preposterous; however, it was an early example of a flood of restrictive, segregative, and carceral measures. Despite the rhetoric of empire, these measures were not primarily protective of purportedly defenseless primitive cultures. Colonial instruments were manipulated in order to achieve colonial goals.

When the Mica Bay Uprising took place, it was not simply an act of aggression. Rather than thoughtless barbarity, the uprising asserted indigenous rights to resources and demanded recognition of promises made to indigenous allies. Shinguakouse did not instruct his people to vacate the Garden River Village in favour of Manitoulin Island when the colonizing state discerned the mining potential of the north shore of Lake Huron. Early negotiations with the Anishnabe peoples, held on Manitoulin with colonial emissaries, were unsatisfactory. While determined resistance of mineral extraction led to Shinguakouse's arrest and detention, the economic incentive combined with the threat of indigenous opposition enlivened colonial efforts to extinguish Aboriginal title through treaties.

As with mineral licensing on the north shore, fishing leases were prematurely granted in Manitoulin waters before formal treaties were made. Nonetheless, as with communities on the north shore, the indigenous communities of Manitoulin Island already had dealings with colonial governments. Since the Wikwemikong chiefs did not accept William McDougall's pre-prepared treaty text, the eastern portion of Manitoulin Island remained unceded territory. Manitoulin's other indigenous communities were situated on compact reserves. A great deal of the "Indian lands" once set aside by Sir Francis Bond Head could then be proffered by Indian Agents for sale to "actual settlers." These shrunken segregative geographies were administered through the British colonial government town of Manitowaning that sat in comparative parallel to the Jesuit mission in the village of Wikwemikong.

Geographic restriction was employed to assert state law in circumstances where the persistence of indigenous peoples and the resilience of indigenous laws undermined the legitimacy of state claims to territory. Colonizing governments were driven to support the rhetoric of uncivilized, unregulated, and legally unoccupied lands through which they justified their entitlement to indigenous territories. As the historically scandalous death of Fisheries Commissioner William Gibbard underscores, the capabilities of First Nations seemed most threatening when indigenous communities continued to negotiate their legal rights within colonial systems in times and places where the state had already presumed ascendancy over a valuable frontier. Chapter Four demonstrates that the indigenous peoples of the northern shores and islands of Lake Huron were actively engaged in mediating the incursions of the state and continually pressed their legal rights. While the legal capacities of First Nations struck at the heart of the colonizing state, the embodied agency of indigenous persons struck fear into the hearts of settlers. The expanding structures of Indian Affairs were interested in maintaining state control of indigenous peoples, territories, and the resources therein through geographic containment. Precluding criminality was a central organizing principle of colonial rationalizations.

Chapter Five evaluates the *Indian Act*, the legislation that formalized "Indian" relationships with the Canadian state, as a legal instrument of assimilative segregation. Surveillance and geographic restriction were principal strategies of colonial guardians for whom "Indian" identity was legally antithetical to enfranchisement as adults in the Canadian state. Indian Affairs attempted to stifle ceremonies, meetings, and practices that bolstered cooperation between indigenous peoples. First Nations leaders, such as the Chiefs of Wikwemikong, observed the workings of colonial governance and worked to articulate the position their communities relative to colonial legal systems. As the *Indian Act* was amended and applied in ways that suited colonial convenience, it worked to undermine, although it could not fully negate, indigenous principles of legal order and self-determination.

The *Indian Act* was an evolving legislative tool turned to the purposes of the assimilative state. Although it has more recently been divested of some of its most telling language, this dissertation has made evident that, from the first consolidation of colonial laws into the recalcitrant legislation in 1876, the *Indian Act* has contained criminalizing provisions from which other federal and provincial statutes borrowed. Using the formative example of Canada's North-West frontier, Chapter Six deepens the analysis of the *Indian Act* as an instrument of criminalization. Specific connections are made between indigenous identities, the legal authority of the Canadian state, and the *Criminal Code*. Indigenous persons were significantly exposed to

criminal investigation, prosecution, and punishment through the *Indian Act*. The Indian Agents who formed the Department of Indian Affairs' Outside Service were tasked with the protection of government wards, yet they were also engaged in land sales and other functions. The obligation of Indian Agents to uphold colonial standards of protective "civilization" were eroded by their powers to single-handedly orchestrate convictions. Despite Indian Affairs' legally-instituted paternalistic guardianship over "Indians," the goal of assimilation was always predominant. The case of a girl married against her will, seemingly eligible for the dissolution of her marriage, yet denied a divorce because she was not thought to meet moral standards, is illustrative of the callousness with which narrow moralistic judgments were privileged above legal principle and protection.

Chapter Seven connects the "Drunken Indian" stereotype, a prejudice that is still closely aligned with the overrepresentation of Aboriginal persons in provincial and federal prisons, with assimilative criminalization. Ironically, although the *Indian Act* is often examined for its delineations of who does, and does not, qualify for "Indian status," in its criminalization of intoxicants, it allowed these distinctions to be circumvented. Applying criminalizing stereotypes to indigenous identities gave Indian Affairs, provincial regulators, and the police the power to assert extreme control over individuals who could be racialized as associated with "Indian" lands, communities, or modes of life. "Indians" did not have the legal access to alcohol afforded the settler communities that they were supposed to become enfranchised into. Reserves were critical legal boundaries of prohibitions of liquor manufacture, possession, trade, and consumption. The surveillant geographies of reserves facilitated intervention in the application of laws that were already inequitable. Indian Agents were given the power to investigate, judge, and incarcerate persons accused of contravening the intoxicant provisions of the *Indian Act*.

In Ontario, the Interdiction List, or the "Indian List," was used by the LCBO to regulate problematic access to liquor. Efforts were made to use this list to bar the sale of liquor to "Indians" and Indian Affairs' enfranchisement cards to facilitate legal access to liquor purchase; however, this chapter finds that phenotypical racializations, racialization through social affiliation, and racialization through connection to reserve geographies defined and criminalized "Drunken Indians." The criminalizing carceral consequences of this racialization shifted beyond the realm of Indian Affairs into that of the LCBO, law enforcement, and prominent legal decisions following the 1951 *Indian Act*. Although "Indian" access to liquor have become less constrained, racialization and place-specific criminalizations of liquor consumption continue.

Following Chapter Seven's examination of one of Indian Affairs' major assimilative ideals, sobriety, and the criminalization of those who appeared to fall short of this criterion for enfranchisement, Chapter Eight turns to the establishment of the carceral tools that Indian Affairs exercised to punish these criminal transgressions. The intentional use of incarceration for assimilative ends is substantiated in Chapter Eight. Local lock-ups were part of traditional British systems of carceral justice; however, Indian Affairs turned them to their own assimilative ends when they directed their construction on "Indian lands," using Indian funds, across Canada. As symbols of state power in geographic outposts, as well as troubling places of punishment, lock-ups prompted activism and resistance in indigenous communities.

In Chapter Nine, archival research and jailhouse palimpsests ground Indian Affairs' use of lock-ups in Manitoulin Island, a flagship geography of indigenous segregation. The establishment of lock-ups in Manitowaning, Little Current, and Gore Bay was an important element of the Department of Indian Affairs' paternalistic program of assimilation for the indigenous peoples of Manitoulin Island. Lock-ups have been reconceived as civic buildings and recast as interesting local museums housed in town jails. Nevertheless, through archival research, reading the landscape, understanding criminalizing legislation, and situating lock-ups within the systems of carceral punishment practiced by Indian Affairs, the deeper layers of these carceral facilities emerge.

For the most part, from the construction of the three provincial Manitoulin Island lock-ups until their retirement as carceral facilities, when local Indian Agents laid charges against "Indians" and adjudicated cases, they kept assimilation through incarceration within their geographical purview. Indian Agents were obligated by *Indian Act* provisions to take on judicial functions and apply carceral terms to "Indian" wards for actions that may not have even been offenses for settlers. Since they could, as wards, be subject to intense surveillance and swift summary conviction through the aggregated powers of the Indian Agent, prior to the Second World War, "Indians" often served sentences in Manitoulin Island lock-ups. In this way, even as they appeared to perform within them, Indian Agents circumvented settler judicial systems that had fewer "minor" offenses to prosecute, more frequently allowed for legal counsel and appeal, and made it more difficult to incarcerate. Settlers, facing with more substantial charges, moved beyond the domain of one local official into larger judicial systems and wider geographies.

From the grounding of assimilation through incarceration in Chapter Nine, Chapter Ten identifies compelling continuities in the carceral assimilation of indigenous peoples despite moves towards integrating "Indians" into the wider social welfare programs of the state during,

and following, the Second World War. In the fullness of time, jail facilities in police stations replaced the original Manitoulin Island lock-ups. As the new year commenced in 1945, the District Gaol at Gore Bay was officially closed and prisoners were to be transported to the Sudbury District Gaol. Indian Agents remained involved in criminal matters; however, their ability to determine cases and retain "Indians" on Manitoulin Island had diminished. When three boys from the Unceded portion of Manitoulin Island appeared to be embarking on a pattern of housebreaking in town, they were sent away to Training School in Toronto. Although not promoted as a punishment, for the children sent from Manitoulin Island to Shingwauk residential school, perceived offenses, mock trials, and the school jail meant that children experienced incarceration. Residential schools also taught assimilative labour. By the Second World War, prisoners sentenced to Canadian penitentiaries were assigned labour in order to instill in them admirable qualities of industry. In a strange economy of prison labour and assimilative cooperation, penitentiary products included the tools with which children might labour in residential schools.

The material geographies of carceral places are evidence of the close ties between incarceration and assimilation despite relocations, diminishing judicial powers, and Indian Affairs' public face of impartiality. Through a successful Access to Information application and researcher agreement with the National Archives of Canada, these connections are brought to light. The burgeoning proportion of Aboriginal inmates in federal and provincial prisons in the second half of the twentieth century and in recent years is not, in a strict sense, a new phenomenon. The overrepresentation of Aboriginal persons in provincial and federal correctional systems is, to a certain extent, a relocation of incarceration from the purviews of individual Indian Agents into more centralized institutions.

Despite the suffering wrought by colonialism, painful wounds of injustice are certainly not the full story of indigenous peoples in Canada. The often exclusionary Canadian national perspective fails to observe that First Nations communities demonstrate much more than persistence or resilience in response to the colonizing onslaught. In different ways, First Nations demonstrate the innovation, accomplishment, humour, and effective management practices springing from their own diverse indigenous cultures. Notwithstanding the enduring repercussions of grievous colonial legacies, the shifting topographies of First Nations' interactions with the Canadian state have the potential to evolve from colonialist desire for indigenous land towards a respectful appreciation that has thus far been antithetical to the very structure of the Canadian state.

By drawing on the collective wisdom of the peoples within its state territories, Canada has the capacity to break down historical barriers and simultaneously recognize First Nations' self-determining status alongside full citizenship. For the Canadian state, indigenous identities will always be an integral part of its past, present, and future. A great deal of work has yet to be done to recognize and redress the deep historical-geographical injustices indicated by the continuing overrepresentation of Aboriginal persons in Canadian prisons. Tackling such pernicious questions requires the resourcefulness of scholars of many different disciplines, experiences, and identities. Let us strip the blindfold from Lady Justice and adorn her differently. Allow her to see that constructing a system without insight into the colonial legal geographies of indigenous persons has not brought equality. Although there are different parts to play, the task of unmasking this structural inequality belongs to everyone.

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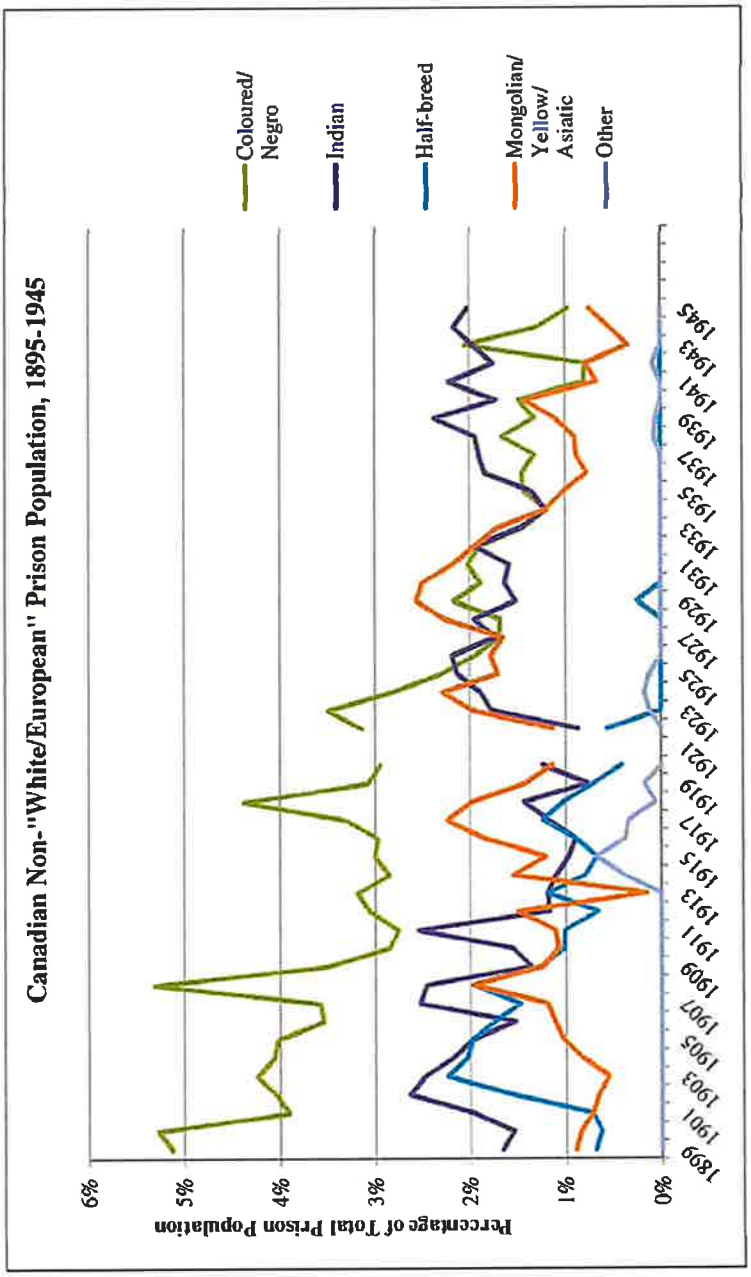
Appendix A

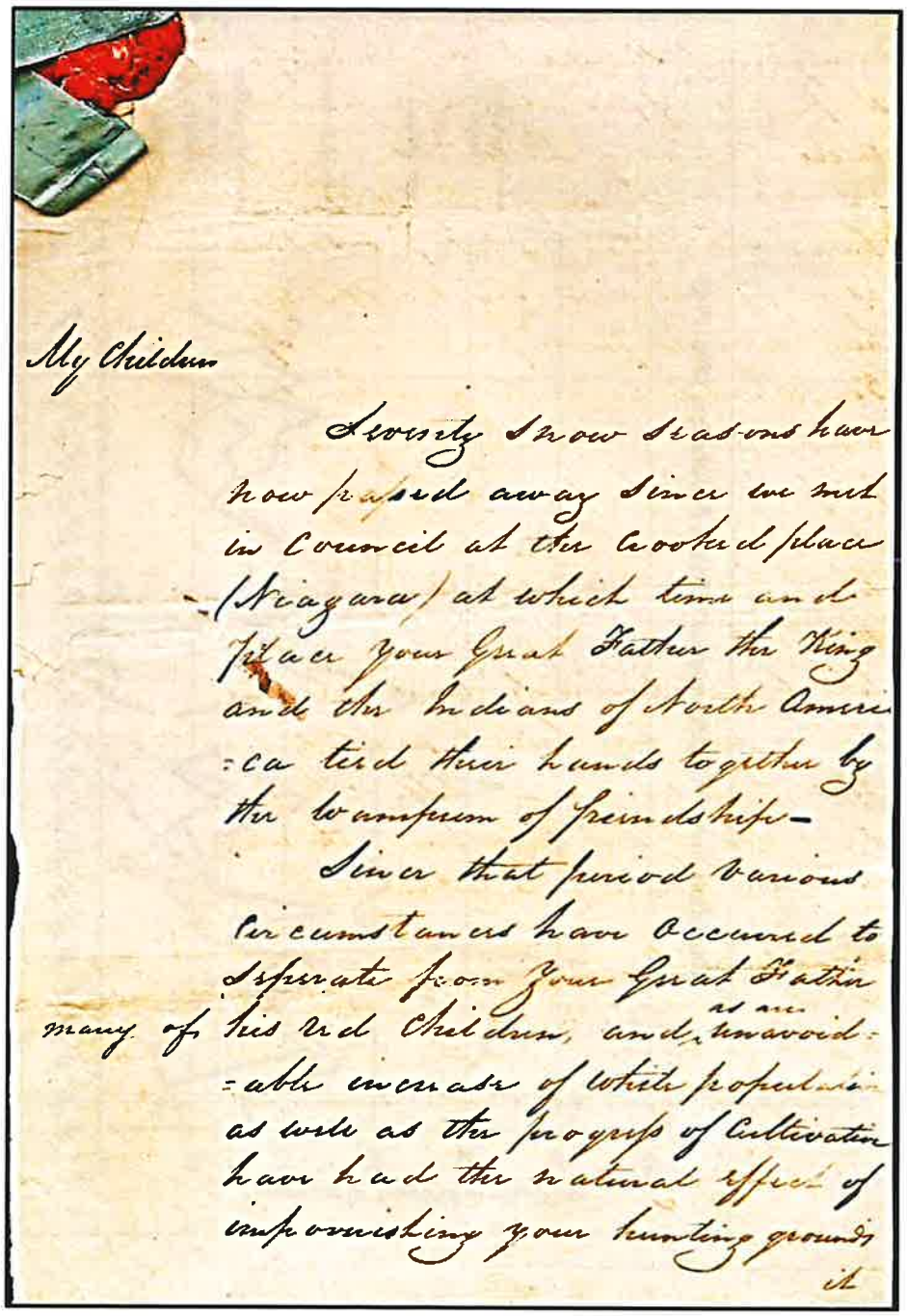
Canadian Non-"White/European" Federal Prison Population, 1895-1945[1]



[1] Reports of the Minister of Justice as to Penitentiaries in Canada, 1895-1913; Reports of the Inspectors of Penitentiaries, 1914-1918; Reports of the Superintendent of Penitentiaries, 1919-1923; Annual Reports of the Superintendent of Penitentiaries, 1924-1945.

Appendix B

Sir Francis Bond Head's Manitoulin Document



My Children

Seventy snow seasons have now passed away since we met in Council at the crooked place (Niagara) at which time and place your Great Father the King and the Indians of North America tied their hands together by the wampum of friendship—

Since that period various circumstances have occurred to seperate from Your Great Father many of his red Children, and, unavoidable increase of which population as well as the progress of cultivation have had the natural effect of impoverishing your hunting grounds it

it has become necessary that new ar-
=rangements should be entered into for
the purpose of protecting you from the
encroachments of the whites.

In all parts of the world
farmers seek for uncultivated land
as eagerly as you, my red Children
hunt in your forest for game. - If
You would cultivate your land, it
would then be considered your own
property in the same way as your
dogs are considered among Yourselves
to belong to those who have reared
them; but uncultivated land is
like wild Animals, and Your Great
Father who has hitherto protected
You, has now great difficulty in
securing it for You from the whites,
who are wanting to cultivate it. -

Under these circumstances
I have been obliged to consider what
is best to be done for the red Chil-
=dren of the forest and I now tell
You my thoughts -

It appears that these Islands

in

on which we are now assembled in Council, as well as all those on the North Shore of Lake Huron, alike claimed by the English, the Ottawas, and the Chippewas.

I consider that from their facilities and from their being surrounded by innumerable fishing Islands, they might be made a most desirable place of Residence for many Indians who wish to be civilized as well as to be totally separated from the Whites; and I now tell you that your Great Father will withdraw his claim to these Islands, and allow them to be applied for that purpose.

Are you therefore the Ottawas and Chippewas willing to relinquish your respective Claims to these Islands, and make them the property (under your Great Father's Control) of all Indians whom he shall allow to reside on them; if so, affix your marks to this my Proposal

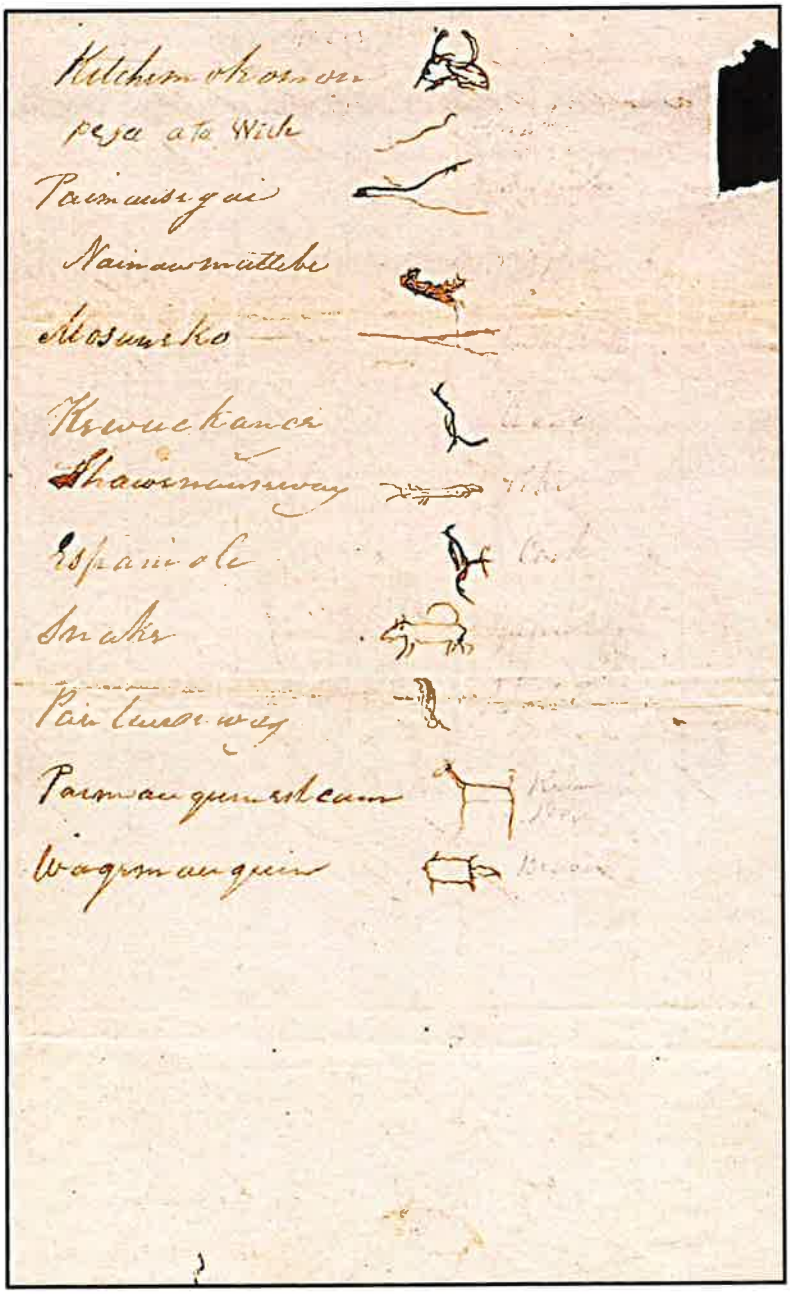
F. B. Head

Manitowaning
August 9th 1836.

J. B. Assikinack

Mokomunish ×

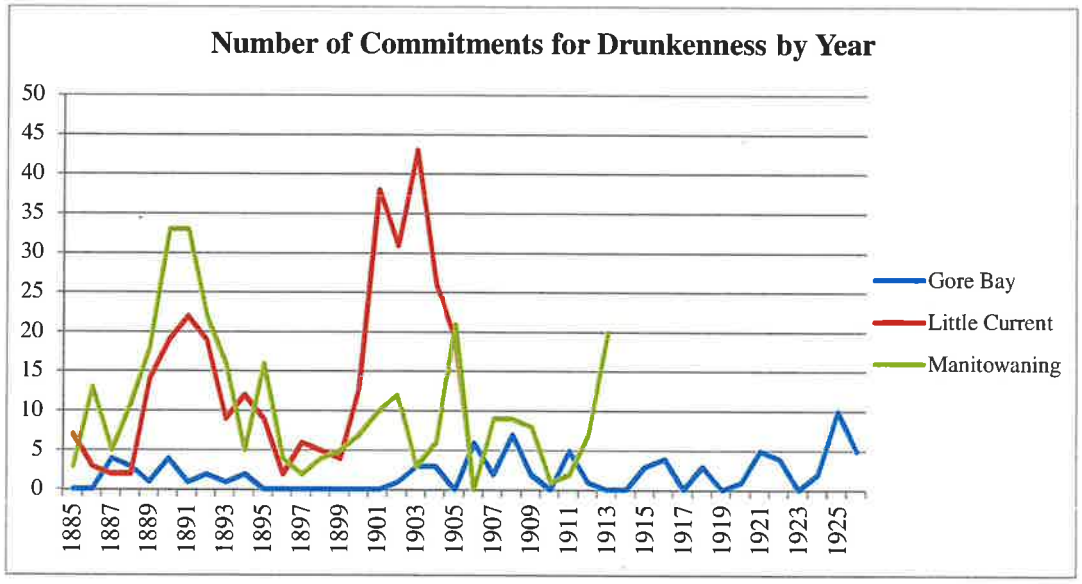
Kinewin  Tawackkuck



[1] Adapted from "The Chippewa, Ottawa and Suaking Indians – Provisional Agreement for the Surrender of the Manitoulin Islands and the Islands on the North shore of Lake Huron and also of the Sauking Territory – IT 120 1836/08/09," 1836, National Archives of Canada, RG10: Department of Indian Affairs, R216-79-6-E: Treaties and Surrenders, Volume: 1844/IT120, Access Code: 90.

Appendix C

Manitoulin Island Provincial Lock-ups: Drunkenness[1]



[1] Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols, Prisons and Reformatories of the Province of Ontario, 1885-1888, 1890-1898; Annual Reports of the Inspector of Prisons and Public Charities for the Province of Ontario, 1889; Annual Reports of the Inspector of Prisons and Reformatories of the Province of Ontario, 1899-1905; Annual Reports of the Inspector of Prisons and Public Charities upon the Common Gaols of the Province of Ontario, 1906-1908; Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, 1909-1923, 1925; Annual Report upon the Prisons and Reformatories the Ontario Board of Parole and the Commissioner of Extra-mural Employment of the Province of Ontario, 1924.

Appendix D

Manitoulin Convictions Under the *Indian Act*

Convictions Under the *Indian Act*, Manitoulin Island, From 10 April 1947 to 25 October 1948[1]

Date	Section	Finding	Sentence	Costs	Notes
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.65	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.65	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
10-Apr-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$2.65	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.15	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$2.15	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.15	Witness fee $1.50
10-Apr-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.15	Witness fee $1.50
12-Apr-47	135	Guilty	$5 and costs or in default of payment 10 days in jail	$1.50	
12-Apr-47	135	Guilty	$5 and costs or in default of payment 10 days in jail	$1.50	
2-Jun-47	130(2)	Guilty	One month in District Gaol	$3.50	Warrant issued, not R.T., [Dated 23 June in Indian Affairs Constable Voucher]
3-Jun-47	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.50	Arrest cost $1.50
18-Jun-47	130 (1)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	

[1] Adapted from "Manitoulin Island District Office – Manitoulin Island Agency – Law Enforcement – Intoxicants," 1946-1949, National Archives of Canada, RG10: Department of Indian Affairs, Volume: 12686, Series C-V-26, File: [19]/18-6, Part 2, Access Code: 32.

19-Jun-47	126(a)	Guilty	$50 and costs or in default of payment one month in jail		
19-Jun-47	135	Guilty	$5 and costs or in default of payment 5 days in jail	$2.50	Arrest cost $1.50
19-Jun-47	135	Guilty	$10 and costs or in default of payment 10 days in jail	$1.50	Arrest cost $1.50
19-Jun-47	135	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	Arrest cost $1.50
23-Jun-47	130(1)	Guilty	$25 and costs or in default of payment 20 days in jail	$4.60	
23-Jun-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.85	Witness fee $1.50
23-Jun-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.85	Witness fee $1.50
23-Jun-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$2.85	Witness fee $1.50
? July 1947	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$8.15	2 arrests cost $3.00, witness fee $1.50
2-Jul-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$4.50	Witness fee $1.50
2-Jul-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.50	Witness fee $1.50
2-Jul-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.50	Witness fee $1.50
14-Jul-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$9.15	Witness fee $1.50
14-Jul-47	130(2)	Guilty	One month in Sudbury District Gaol	$3.15	Warrant issued, witness fee $1.50, not R.T.
14-Jul-47	130(2)	Guilty	One month in Sudbury District Gaol	$3.15	Warrant issued, witness fee $1.50, not R.T.
18-Aug-47	128	Guilty	One month in District Gaol	$2.55	Warrant issued, witness fee $1.50, not R.T.
18-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	
18-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.55	Witness fee $1.50, JP $1.00
18-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.55	Witness fee $1.50, JP $1.00

22-Aug-47	130(1)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.00	Given until 27 Aug to pay fine, paid to RCMP and remitted by him, witness fee $1.50
23-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.90	Witness fee $1.50
23-Aug-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.00	Given until 29 Aug to pay fine, paid 1 Sept, witness fee $1.50
23-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	Given until 29 Aug to pay fine, fine not paid, warrant issued, witness fee $1.50
23-Aug-47	135	Guilty	$10 and costs or in default of payment 10 days in jail	$3.90	Arrest cost $1.50
23-Aug-47	130(2)	Guilty	$15 and costs or in default of payment 15 days in jail	$2.00	Given until 29 Aug to pay fine, paid 1 Sept, witness fee $1.50
23-Aug-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$0.50	
23-Aug-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.65	Witness fee $1.50
22-Aug-47	128		Remanded to 12 Sept., charge withdrawn		
18-Oct-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.80	
18-Oct-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$4.40	
18-Oct-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.90	
1-Nov-47	128	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	Arrest cost $1.50
8-Nov-47	135	Guilty	$25 and costs or in default of payment one month in jail	$2.95	
8-Nov-47	130	Guilty	$5 and costs or in default of payment 10 days in jail	$2.00	

14-Nov-47	130(2)	Guilty	$15 and costs or in default of payment 30 days in jail	$4.60	
22-Nov-47	128	Guilty	$10 and costs or in default of payment 10 days in jail	$3.65	
24-Nov-47	130	Guilty	$25 and costs or in default of payment 30 days in jail	$4.70	Arrest cost $1.50
1-Dec-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.40	
1-Dec-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.40	
6-Dec-47	128	Guilty	$25 and costs or in default of payment 30 days in jail	$6.50	Arrest cost $1.50
6-Dec-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$6.50	Arrest cost $1.50
11-Dec-47	130	Guilty	$10 and costs or in default of payment 10 days in jail	$4.40	
22-Dec-47	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.70	
7-Jan-48	130(2)	Guilty	30 days in jail	$3.70	Warrant issued, witness fee $1.50
13-Jan-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.20	Witness fee $1.50
13-Jan-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.70	
13-Jan-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail		Warrant issued
13-Jan-48	128	Guilty	$25 and costs or in default of payment 30 days in jail consecutive with former charge	$4.50	Same individual as above, warrant issued, sentenced to District Gaol
27-Jan-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.70	
9-Feb-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.50	
9-Feb-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$1.50	Arrest cost $1.50
14-Feb-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$3.70	
14-Feb-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$1.70	
21-Feb-48	130(2)	Guilty	$15 and costs or in default of payment 20 days in jail	$3.50	

21-Feb-48	130(2)	Guilty	$15 and costs or in default of payment 20 days in jail	$1.50	
23-Feb-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$3.50	
28-Feb-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$3.70	
16-Mar-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.20	
18-Mar-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.70	
18-Mar-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.50	
25-Mar-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$4.70	
25-Mar-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$5.30	
30-Mar-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.70	
30-Mar-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.10	
30-Mar-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$1.70	
30-Mar-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.70	
30-Mar-48	130(2)	Not Guilty			Case dismissed
30-Mar-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.30	
24-Feb-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.50	Arrest cost $1.50
13-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
13-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$0.90	
13-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$3.20	
16-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail		
16-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.90	Witness fee $1.50
23-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.70	
23-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
23-Apr-48	130(2)	Guilty	$15 and costs or in default of payment 10 days in jail		

29-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.20	Witness fee $1.50
29-Apr-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$2.90	
29-Apr-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
29-Apr-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$2.50	
24-Feb-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$1.20	
30-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$4.80	Witness fee $1.50
30-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.40	Witness fee $1.50
14-Apr-48	130(2)	Guilty	$10 and costs or in default of payment 15 days in jail	$9.20	Warrant issued 21 June 1948, 3 witnesses fees $4.50
7-Jun-48	126a	Guilty	$50 and costs or in default of payment 30 days in jail	$5.50	
7-Jun-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$2.50	
7-Jun-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$4.50	
10-Jun-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$5.50	
10-Jun-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$6.50	Witness fee $3.00
15-Jun-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$3.50	
26-Jun-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.00	
26-Jun-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.00	
6-Jul-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$2.40	
6-Jul-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$4.70	
8-Jul-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$4.90	
12-Jul-48	128	Guilty	60 days in the District Gaol		Warrant issued
15-Jul-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.70	
16-Jul-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.50	

16-Jul-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.70	
23-Jul-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
23-Jul-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$1.30	
23-Jul-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$1.10	
23-Jul-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$1.30	
23-Jul-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$1.70	
23-Jul-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$3.70	
? Aug 1948	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.70	
3-Aug-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
9-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
16-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.30	
17-Aug-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$4.90	
17-Aug-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$5.20	
17-Aug-48	130(2)	Guilty	$10 and costs or in default of payment 10 days in jail	$2.70	
18-Aug-48	130 (2)	Guilty	$10 and costs or in default of payment 10 days in jail	$5.70	
19-Aug-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.00	
19-Aug-48	130	Guilty	30 days in jail		Warrant issued
19-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.70	
19-Aug-48	128	Guilty	30 days in jail		Warrant issued
19-Aug-48	130	Guilty	$25 and costs or in default of payment 30 days in jail	$4.00	
19-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
19-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
23-Aug-48	130	Guilty	$25 and costs or in default of payment 30 days in jail	$2.00	

24-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$5.50	
26-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.70	
26-Aug-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$1.70	
28-Aug-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$4.30	
28-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.20	
28-Aug-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$4.20	
28-Aug-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.00	
30-Aug-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	
1-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.60	
3-Sep-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.00	
7-Sep-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$2.90	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.70	
7-Sep-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$1.90	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.30	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.90	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.10	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.50	
7-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
7-Sep-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$1.00	
7-Sep-48	126c	Guilty	$50 and costs or in default of payment 30 days in jail	$6.00	
10-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.10	
10-Sep-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.30	

10-Sep-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$3.90	
10-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.10	
10-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.50	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	
16-Sep-48	128	Guilty	$25 and costs or in default of payment 30 days in jail	$4.50	
16-Sep-48	130	Guilty	$15 and costs or in default of payment 15 days in jail	$2.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$1.00	
16-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$0.00	
20-Sep-48	126a	Guilty	$50 and costs or in default of payment 30 days in jail	$2.00	
23-Sep-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$8.50	
23-Sep-48	126c	Guilty	$50 and costs or in default of payment 30 days in jail	$12.50	
2-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$3.50	
4-Oct-48	135	Guilty	$10 and costs or in default of payment 10 days in jail	$3.50	
7-Oct-48	135	Guilty	$5 and costs or in default of payment 10 days in jail	$2.00	
9-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$21.50	
9-Oct-48	130	Guilty	$10 and costs or in default of payment 15 days in jail	$23.60	
12-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	

18-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.50	
25-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.00	
25-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$5.20	
25-Oct-48	130	Guilty	$10 and costs or in default of payment 10 days in jail	$2.70	

Appendix E

General Research Ethics Board Approval

November 1, 2010

OFFICE OF RESEARCH SERVICES
Fleming Hall/Jemmett Wing, Room 301
Queen's University
Kingston, Ontario, Canada K7L 3N6
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Ms. Madelaine Jacobs
Ph.D. Candidate
Department of Geography
Queen's University

Dear Ms. Jacobs:

GREB Ref #: GGEO-115-10
Title: "Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s"

The General Research Ethics Board (GREB), by means of a delegated board review, has cleared your proposal entitled **"Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s"** for ethical compliance with the Tri-Council Guidelines (TCPS) and Queen's ethics policies. In accordance with the Tri-Council Guidelines (article D.1.6) and Senate Terms of Reference (article G), your project has been cleared for one year. At the end of each year, the GREB will ask if your project has been completed and if not, what changes have occurred or will occur in the next year.

You are reminded of your obligation to advise the GREB, with a copy to your unit REB, if applicable, of any adverse event(s) that occur during this one year period (details available on webpage http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html – Adverse Event Report Form). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes in study procedures or implementations of new aspects into the study procedures on the Ethics Change Form that can be found at http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html - Research Ethics Change Form. These changes must be sent to the Ethics Coordinator, Gail Irving, at the Office of Research Services or irvingg@queensu.ca prior to implementation. Mrs. Irving will forward your request for protocol changes to the appropriate GREB reviewers and / or the GREB Chair.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

Joan Stevenson, PhD
Professor and Chair
General Research Ethics Board

c.c.: Dr. W. George Lovell and Dr. Brian S. Osborne, Faculty Supervisors
Dr. Anne Godlewska / Dr. John Holmes, Co-Chairs, Unit REB
Joan Knox, Dept. Admin.

JS/gi

October 17, 2011

Ms. Madelaine Jacobs
Department of Geography
Queen's University
Kingston, ON K7L 3N6

GREB Romeo #: 6005515
Title: "GGEO-115-10 Assimilation Through Incarceration: Legal Historical Geographies of Incarcerating "Indians" on Manitoulin Island 1945-1960s"

Dear Ms. Jacobs:

The General Research Ethics Board (GREB) has reviewed and approved your request for renewal of ethics clearance for the above-named study. This renewal is valid for one year from November 1, 2011. Prior to the next renewal date you will be sent a reminder memo and the link to ROMEO to renew for another year.

You are reminded of your obligation to advise the GREB of any adverse event(s) that occur during this one year period. An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours. Report to GREB through either ROMEO Event Report or Adverse Event Report Form at http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes in study procedures or implementations of new aspects into the study procedures. Your request for protocol changes will be forwarded to the appropriate GREB reviewers and/or the GREB Chair. Please report changes to GREB through either ROMEO Event Reports or the Ethics Change Form at http://www.queensu.ca/ors/researchethics/GeneralREB/forms.html.

On behalf of the General Research Ethics Board, I wish you continued success in your research.

Yours sincerely,

Joan Stevenson, Ph.D.
Professor and Chair
General Research Ethics Board

c.c.: Dr. W. George Lovell and Dr. Brian S. Osborne, Faculty Supervisors
Dr. Mark Rosenberg / Dr. John Holmes, Co-Chairs, Unit REB
Joan Knox, Dept. Admin.

Black Males' Perceptions of and Experiences with the Police in Toronto

by

Akwasi Owusu-Bempah

A thesis submitted in conformity with the requirements
for the degree of Doctor of Philosophy

Centre for Criminology and Sociolegal Studies
University of Toronto

Black Males' Perceptions of and Experiences with the Police in Toronto

Akwasi Owusu-Bempah

Doctor of Philosophy

Centre for Criminology and Sociolegal Studies
University of Toronto

2014

Abstract

Canada is commonly depicted as a diverse and tolerant immigrant-receiving nation, accepting of individuals of various racial, ethnic, and religious backgrounds. Nevertheless, Canadian institutions have not been immune to allegations of racial bias and discrimination. For the past several decades, Toronto's Black communities have directed allegations of racial discrimination at the police services operating within the city. Using a mixed-methods approach, this thesis examines Black males' perceptions of and experiences with the police in the Greater Toronto Area. In order to provide a comprehensive examination of this issue, this thesis is comprised of three studies with three distinct groups of Black males. The first of these three studies utilizes data from a representative sample of Black, Chinese, and White adults from the Greater Toronto area to examine racial and gender differences in perceptions of and experiences with the police. The second study draws on data from a sample of young Black men recruited from four of Toronto's most disadvantaged and high crime neighbourhoods to examine the views and

experiences of those most targeted by the police. The final study involves interviews with Black male police officers in order to draw on the perspectives of those entrusted with enforcing the law. In line with a mixed-model hypothesis, the findings suggest that Black males' tenuous relationship with the police is a product of their increased involvement in crime, as well as racism on the part of police officers and police services. Using insights drawn from Critical Race Theory, I suggest that both the increased levels of crime and the current manifestations of racism have a common origin in Canada's colonial past.

Acknowledgments

I would first like to thank the 559 Black males whose views and experiences are captured herein; this work is for you. I want to thank my mother for teaching me to question the status quo, and my father for showing me how to do so. I would also like to thank my sisters and my friends for their ongoing support, even when this thesis kept me distant. I owe much debt and gratitude to my supervisor, Dr. Scot Wortley. The guidance, support and opportunities you have provided me over the past decade have been invaluable. You are a great mentor and a true friend. I look forward to many more years of collaboration ahead. I would also like to thank the faculty, staff and my fellow graduate students at the Centre for Criminology and Sociolegal Studies for their encouragement. In particular I would like to thank my thesis committee Dr. Rosemary Gartner, Dr. Matthew Light, Dr. Carl James, and informally, Dr. Mariana Valverde and Dr. Tony Doob. You have all helped improve this work immensely. I also want to thank John Fraser, former master of Massey College at the University of Toronto, as well as the staff, Sr. and Jr. Fellowship of the College. The College provided a wonderful space to fraternize and nurture my intellectual curiosity. I am indebted to the numerous organizations who provided the funding that enabled me to carry out this research: the Association of Black Law Enforcers; the American Society of Criminology – Division of People of Color on Crime; the Canadian Council of Christians and Jews; the Black Business and Professionals Association; Massey College; the Centre of Criminology and Sociolegal Studies John Beattie Fund; the Ontario Graduate Scholarship; and the Social Sciences and Humanities Research Council of Canada. Finally, I would like to thank my partner, Vanessa, for your love and for helping to push me through the last few months of this endeavor. This would have been much more difficult without you.

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CHAPTER 1
Introduction

Canada has an international reputation for being a diverse, tolerant nation comprised of people from numerous racial, ethnic, religious and cultural groups (Wortley and Owusu-Bempah, 2012: 11). Canadian Heritage, the federal government ministry responsible for culture, language and multiculturalism, proudly asserts that Canada's experience with diversity distinguishes it from most other countries, stating that Canada's "32 million inhabitants reflect a cultural, ethnic and linguistic makeup found nowhere else on earth" (Canadian Heritage, 2009). Canada's diversity has been largely fuelled by recent immigration practices. Attracted by the country's relatively high quality of life, and reputation as an open and inclusive nation, well over 200,000 immigrants arrive in Canada each year (Canadian Heritage, 2009). However, as with many racially diverse countries, Canada has not escaped problems related to racism and racial injustice. Indeed, racism and racial discrimination are contentious issues in Canada. While many groups, institutions and individuals deny the existence of racism in Canada's multicultural society, others argue that discriminatory treatment based on race permeates every sector of society and affects racialized people on a daily basis (Jiwani, 2002; Henry and Tator, 2005).

The police have been a major focus of contemporary discussions and investigations of racism in the Canadian context (Commission, 1995; Wortley, 2003; Tanovich, 2006; Tator and Henry, 2006). This may be unsurprising given the symbolic nature of the police, and the power and authority the institution wields over the citizens of the nation. Indeed, the police are often held up as exemplary in a democratic society; as Ericson and Haggerty (1997) remark, "the police are a central symbol of Canadian identity" (287). Nevertheless, evidence illustrates that racialized Canadians—particularly Black people of Afro-Caribbean descent—are over-

represented in a host of policing outcomes (stop, search, and arrest statistics, for example), and hold negative attitudes towards the police. This leads commentators to suggest that the police are biased against Black Canadians, especially Black males (Rankin, 2010a; Tator and Henry, 2006). Drawing on data from three studies, this thesis presents an examination of Black males' perceptions of and experiences with police in the Greater Toronto Area.

This chapter begins by presenting the historical background documenting the history of police relations with Black Torontonians. The chapter then explores this history in the context of the academic debate over the causes of "Disproportionate Minority Contact;" that is, the current explanations put forth to explain Black over-representation in policing (and other criminal justice) outcomes. The final two sections of this chapter provide an account of why police/race relations have received relatively little research attention in Canada, detail the main contributions of the thesis, and provide an outline of the chapters that follow.

Background: Black Immigration and Increasing Police Tension

In his historical analysis of systemic racism in Ontario's criminal justice system, Clayton Mosher documents how the police used public order offenses discriminately as a means of controlling Toronto's Black population in the early 20th century (1998: 170). As the immigration reforms of the 1960s opened up Canada's doors to immigrants from non-European countries, an influx of Black immigrants arrived, many of whom settled in Toronto (Milan and Tran, 2004; Chui et al., 2008). It was not long after that tension between Toronto's growing Black communities[1] and the police escalated and then peaked following a series of police shootings involving Black males in the late 1970s (Wasun, 2008). For example, on August 9th, 1978 a white police officer shot and

[1] I use the term "Black communities" rather than "Black community" to recognize the diversity within Toronto's Black population. There is no one homogeneous Black community in Toronto, but rather many communities comprised of people with diverse backgrounds, cultural orientations, and lived experiences (see also Ezeonu, 2008).

killed 24 year old Buddy Evans in a Toronto nightclub (Nangnaya, 2011). The officer's acquittal, following an 11-week inquest, prompted a rally organized by the Sikh-led Action Committee Against Racism. One year later, 35 year old Albert Johnson was shot to death in his apartment by two white officers (see Wasun, 2008). This shooting again sparked community mobilization. Dudley Laws, who would become an important figure in the fight against police discrimination, formed the Albert Johnson Defense Committee Against Police Brutality. In October of 1979, members and supporters of this Committee gathered outside of city hall to protest the death of Johnson (Wasun, 2008). The two officers involved in the Johnson shooting were ultimately acquitted of manslaughter charges and the Ontario government responded to the demonstrations with institutional reform. For example, in 1981 the province enacted a three-year pilot project under the Metro Toronto Police Force Complaints Project Act called the Office of the Public Complaints Commissioner. The Office, intended to provide an improved civilian complaint system to deal with incidents of police brutality, faced much criticism from members of Toronto's Black communities because it was seen to be biased in favour of the police (Wasun, 2008).

A second series of police shootings involving Black men in the late 1980s prompted further community mobilization. Days after the 1988 police shooting of 44-year old Lester Donaldson in his Toronto rooming house apartment, the Black Action Defense Committee – formed by Dudley Laws and Charles Roach – organized a demonstration in front of the police division where the suspect officer worked. A second police shooting that year further enraged members of Toronto's Black communities, increasing racial tensions in the city. On December 8, 1988, 17-year old Michael Wade Lawson was shot in the back of the head by a Peel regional police officer using an illegal hollow-point bullet, a type of enhanced ammunition banned under

Ontario's Police Services Act (Wasun, 2008). Public demonstrations continued after the acquittals of the officers involved in these cases.

In response to this social unrest, the provincial government formed the Task Force on Race Relations and Policing, with a mandate "to address promptly the very serious concerns of visible minority communities respecting the interaction of the police community with their own" (Lewis, 1989). The Task Force concluded that racialized Ontarians felt that they were policed unfairly, and noted that the lack of public confidence posed a major challenge to effective policing (Lewis, 1989). The Task Force also made a number of recommendations on hiring, training and accountability measures related to the policing of an increasingly diverse province, and called for the creation of a civilian oversight body to investigate police shootings (Lewis, 1989; Ontario, 2003). In 1990, in response to this recommendation, the provincial government created the Special Investigations Unit (SIU) to increase police accountability in the investigation of cases involving the serious injury or death of a civilian (Wortley, 2006). Unfortunately, the SIU has faced allegations of having a pro-police bias, similar to the earlier Office of the Public Complaints Commissioner (Rush, 2012).

The early 1990s showed promise in improving the relationship between Toronto's Black communities and the police. In the wake of the Yonge Street riots[2], New Democrat leader and provincial premier Bob Rae tasked Stephen Lewis, former Ambassador to the United Nations, with preparing a report on race relations in Ontario. Lewis identified anti-Black racism as a major point of concern and recommended that a commission be struck to investigate racial discrimination in all facets of the Ontario criminal justice system. The Commission on Systemic

[2] On May 4, 1992 a demonstration was organized outside of the U.S. consulate building in downtown Toronto to protest the acquittal in Los Angeles of the officers accused in the police beating of Black motorist Rodney King. The demonstration spread from the immediate vicinity of the U.S. consulate to Yonge Street, a main commercial thoroughfare. Demonstrators defaced property, broke storefront windows and looted local establishments. These events came to be known as the "Yonge Street riots" (Anisef and Lanphier, 2003: 401).

Racism in the Ontario Criminal Justice was subsequently formed to "inquire and make recommendations about the extent to which criminal justice practices, procedures and policies in Ontario reflect systemic racism" (Commission on Systemic Racism, 1995: i). Anti-Black racism was to be a focal point of the Commission's work. In its final report, the Commission provided evidence that Toronto residents perceived the police to discriminate on the basis of race, and that the police did so in practice, for example, by stopping Black Torontonians at twice the rate of whites (Commission, 1995: ix). The Commission made almost 80 recommendations related to policing. However, drastic political change was underway in the province that ushered in wide-ranging changes – changes that affected Black Torontonians. Indeed, a newly elected Conservative government displayed little concern for issues of racial discrimination, and focused instead on both supporting and enhancing police powers.

Changing Political Climate

In their contribution to the Review of the Roots of Youth Violence[3], Walcott and colleagues (2008) credit the introduction of neo-liberal policies with exacerbating the conditions that foster violence within Black communities, thus influencing the way young Black men in Toronto are policed. Walcott et al. argue that the wave of neo-liberalism that swept through many Western nations helped to push Black Ontarians further toward the margins of Canadian society. The election of Mike Harris as Premier of Ontario in the mid-1990s saw the formal introduction of neo-liberal practices in the province via his "Common Sense Revolution" (2008: 335). The erosion of the welfare state – characteristic of the neo-liberal agenda – resulted in the elimination of employment equity, termination of after-school programs, the closing of

[3] The Review of the Roots of Youth Violence was an inquiry and subsequently a report commissioned by the Premier of Ontario following the high-profile shooting of a teen inside a Toronto secondary school in 2007.

recreational facilities, and cuts to social assistance and social housing programs (Walcott et al., 2008: 336; Khenti, 2014). Walcott et al. contend that these changes had dramatic consequences for the social and cultural lives of Ontarians and worsened the circumstances of those already on the margins – intensifying conditions conducive to interpersonal violence. Accompanying these economic and cultural policies was the introduction of new surveillance and management tools, and the demonization of certain populations. Much like the demonization of Black youth during the "mugging crisis" in Thatcher's Britain and the over-policing of Black and Latino communities that intensified under President Reagan in the United States, neo-liberalism brought with it new ways of managing populations deemed problematic in Ontario (Walcott et al., 2008). Harris's "Common Sense Revolution" was accompanied by an increased focus on policing, debates around tougher sentences, longer prison terms, and the possible adoption of three-strikes legislation (Walcott et al., 2008). This period also saw the introduction of zero-tolerance policies in schools, which disproportionally excluded Black students and contributed to what some have dubbed the "school-to-prison pipeline" (OHRC, 2003; Rankin and Contenta, 2009).

The erosion of the welfare state along with the introduction of new forms of surveillance has disproportionately impacted Black people in Toronto, particularly young Black men. Available evidence suggests that violent crime in Toronto has become increasingly concentrated amongst young urban Black males residing in poor communities (Wortley, 2008; Khenti, 2013). As Gartner and Thompson (2004) point out, between 1992 and 2003, the average homicide victimization rate for Blacks in Toronto was almost five times higher than the overall homicide rate in the city. This concentrated violence is used to justify the ramping up of a law and order agenda that targets young Blacks, rather than dealing with the root causes of violence, such as poverty, racism and marginalization. While "Jamaican gangs" and youth street gangs held the

attention of the police throughout the 1990s and early 2000s, it was the Boxing Day shooting of Jane Creba in 2005[4] that helped to propel the policing agenda. In response to Creba's death, the provincial government announced $51 million in funding to help fight gun and gang violence. This funding package included money for more police officers and crown attorneys; the creation of dedicated major crimes courts; $26 million to create and operate a "state of the art" operations centre for the provincial Guns and Gangs Task Force; and funding for the Toronto Anti-Violence Intervention Strategy (TAVIS) (Ontario, 2006). TAVIS is an intensive "hot spot" policing strategy that involves the targeted deployment of police officers to neighbourhoods affected by violence. TAVIS is undeniably enforcement-focused and has faced criticism due to its targeting and mistreatment of young Black men. As Rankin and Winsa of the Toronto Star point out, the intelligence gathering activities of TAVIS offices have done much to strain police-community relations (Rankin and Winsa, 2013a).

Work of the Toronto Star

The Toronto Star newspaper deserves much credit for bringing attention to the policing of Black males in Toronto. To date, the Star has produced four series on race and policing using data obtained through freedom of information requests to the Toronto Police Service (Rankin et al, 2002a; Rankin 2010; Rankin and Winsa, 2012a; Rankin et al., 2013a). In the first of these series, the Star analyzed arrest data collected by the Toronto police from 480,000 incidents (representing the total population of criminal charges – approximately 800,000) that took place between late 1996 and early 2002. The Star concluded that justice in Toronto was different for Blacks and whites. The analysis showed that Black people charged with one count of simple

[4] Creba's death was an inter-racial homicide involving Black male suspects and a white female victim. 2005 was coined "year of the gun" because the number of gun related homicides in Toronto reached an all time high.

drug possession for marijuana were more likely than whites to be taken to the station upon arrest for processing, and once there, Blacks were held overnight for a bail hearing at twice the rate of whites (Rankin et al., 2002a). The original Star series also documented the "Driving While Black" (DWB) phenomenon by showing that Black motorists were more likely than whites to be ticketed for violations that arose only after the initial stop took place (known as "out of sight" driving offences). The Star went so far as to suggest that "the police target Black drivers" (Rankin et al., 2002b). The original series received praise from many in Toronto's Black communities, and from civil liberty and human rights organizations (Tator and Henry, 2006). However, the Chief of the Toronto Police Service quickly denied the allegations (Fantino, 2002). Furthermore, the Toronto Police Association filed a $2.7 billion class action libel suit claiming damages against the Star on behalf of all sworn officers (Tator and Henry, 2006). The suit was later dropped. Subsequently, a group of Black officers announced that they felt that racial profiling existed; that they had been victimized by the practice themselves; and that they had seen their peers engage in racial profiling (Mascoll and Rankin, 2005).

In 2010 the Star produced its second series on race and policing entitled "Race Matters." This series was based on information collected from over 1.7 million "contact cards" (known internally as 208s or "Field Information Reports") that police had filled out during civilian encounters between 2003 and 2008 (Rankin 2010a; 2010b). The police do not fill out contact cards for every civilian encounter, but rather when an officer wants to document an interaction for intelligence gathering purposes (Owusu-Bempah, 2011). These cards contain information about the encounter as well as personal details about the civilian including age, gender and skin colour. The police argue that such documentation is useful in keeping track of individuals and provides information that may be useful in solving crimes (Owusu-Bempah and Wortley, 2014).

The Star's analysis found that Black males between the ages of 15 and 24 were stopped and documented 2.5 times more often than white males of the same age (Rankin 2010a; Rankin 2010b). Interestingly, the data also shows that differences between Black and white carding rates were most pronounced in more affluent, predominantly white areas of the city. This finding may indicate that Black people seem "out of place" in these neighbourhoods, and thus draw the attention of the police (countering police claims that officers only target people in high crime neighbourhoods).

Finally, in 2012, "Race Matters" was followed up by "Known to Police," a series of articles that also focused on the contact card data, this time collected between 2008 and mid 2011. The Star's analysis found that while Black people comprised 8.3% of Toronto's population, they accounted for 25% of the contact cards filled out over this time period (Rankin and Winsa, 2012a). The data also showed that Black people were more likely to be stopped in each of the city's 72 police patrol zones, and that again, Blacks were more likely to be stopped in areas that were predominantly white (Rankin and Winsa, 2012a). This Star series once again drew public attention, and the Chair of the Police Service Board announced that steps would be taken to address carding disparities (Rankin and Winsa, 2012b). Included in the Board's proposals was a review of the carding practice by the City Auditor. This review never took place. However, the Board is still working to deal with the issue, and has adopted a new policy to restrict the use of contact cards (Rankin and Winsa, 2013b; Rankin and Winsa, 2014).

Whitewashing?

Due credit must be given to the Toronto Star for bringing public attention to the policing of Black people in Toronto. However, the original Star series claiming that the Toronto police engage in racial profiling was met with staunch opposition from the Chief of Police and his supporters. For example, Julian Fantino (former chief of the Toronto Police Service) said, "we do not do racial profiling … There is no racism … we do not look at, nor do we consider race or ethnicity, or any of that, as factors of how we dispose of cases, or individuals, or how we treat individuals" (Toronto Star, 2002: A14). Similarly, Craig Brommell, president of the Toronto Police Association at the time, stated in a news release that "[no] racial profiling has ever been conducted by the Toronto Police Service" (Porter, 2002b: A6). Even local politicians weighed in to offer their denials of racism and support of the police. Mayor Lastman declared "I don't believe that the Toronto Police engage in racial profiling in any way, shape, or form" (Toronto Star 2002a: A9). Notably, one of the first pronouncements made by current chief Bill Blair, Julian Fantino's successor, was an admission that racial profiling by the police was in fact a reality in Toronto (James, 2005). However, this admission appears to be tokenistic. For example, data analyzed by the Toronto Star showed that Black males aged 15–24 were stopped and documented 2.5 times more often than white males of the same age (Rankin 2010 b). In response to a presentation of this data, Blair stated: "[w]e look at it as neighborhoods because that's where the crime is taking place. There's a whole bunch of reasons … I don't think that race is one of them" (Toronto Star, 2010). However, while Blair acknowledged some of the factors that lead to criminality, such as poverty, unemployment, and marginalization, this same data showed Blacks to be most over-represented in documented police stops in more affluent areas of the city – areas with large white populations, small numbers of racial minorities, and relatively low levels of

crime. As such, Blair's response appears to be an updated and more sophisticated version of his predecessor's denials.

The allegations and denials surrounding racial discrimination and policing which played out in the pages of the Toronto Star and other Canadian newspapers mirror the debate over the causes of racial disparity in policing outcomes (and other criminal justice statistics) within the academic literature. This debate, often discussed in terms of "Disproportionate Minority Contact," proliferated in the United States in the late 1980s and early 1990s following the publication of William Wilbanks' *The Myth of a Racist Criminal Justice System* (1987) and Coramae Richey Mann's (1993) *Unequal Justice*. Current explanations of Disproportionate Minority Contact run on a continuum. On one end are those, like Wilbanks, who suggest that the criminal justice system (including the police) is virtually colour-blind, and that the assertion that the justice system is racist is a "myth." On the other end of this continuum are those, like Mann, who suggest that the justice system unequivocally discriminates on the basis of race (Piquero, 2008). As Piquero (2008) suggests, this continuum can be viewed within a framework comprised of three hypotheses: 1) the "differential involvement hypothesis" asserts that racial minorities are over-represented at all stages of criminal justice processing because they commit more crimes, and for extended periods of their lives; 2) the "differential selection and processing hypothesis" that suggests racial minorities and minority communities are more intensely surveilled by the police, and subject to discrimination in court and correctional systems; and 3) the "mixed model hypothesis" which asserts that both differential involvement and differential processing, combined, result in the over-representation of racialized people in criminal justice statistics (Piquero, 2008: 63-7).

As a result of the denials of the Star series conclusions by the Chief of Police and his supporters, the police hired an academic to reanalyze the data, which unsurprisingly resulted in different conclusions (Harvey, 2003). Subsequently a debate ensued in the *Canadian Journal of Criminology and Criminal Justice* in which parties on both sides attempted to sway opinion on the matter (see Gold, 2003; Melchers, 2003; Wortley and Tanner, 2003; Gabor, 2004; Wortley and Tanner, 2005). However, this debate centred as much on research methodology as it did the policing of Blacks in Toronto. Wortley and Tanner (2003) challenged the reanalysis conducted by Harvey on behalf of the police, and presented their own research findings that provided support for the *Star's* conclusions. Parties that challenged the suggestion that the Toronto Police Service engaged in racial profiling included Alan Gold (2003), a Toronto lawyer who argued that the original analysis by the *Star* had lacked a proper "benchmark" or comparison population upon which to base a claim of racial disparity. Gold called the *Star's* analysis "junk science" and inaccurately referred to survey data presented by Wortley and Tanner as "anecdotes in bulk" (2003: 397). Similarly, Gabor attacked the definition of racial profiling provided by Wortley and Tanner (2003), arguing that they had misused the term. Gabor also argued that the distribution of crime and thus police deployment practices vary by geographical location, which results in disproportionate police-minority interactions in certain areas (2004: 459-460). Importantly, Gabor argued that "baseless accusations" can inflame conflicts in the community and discredit the police and the justice system (2004: 460-461). However, he had little to say about the impact on the community of the almost immediate outright denial of racism that came from the Chief of Police. Gabor argued that allegations of racial profiling ought to be supported by conclusive evidence of systemic racial bias (2004: 463). However, as he should well know, a lack of readily

available race-based criminal justice data makes such an endeavor particularly difficult within the Canadian context (see Gabor, 1994).

Few other Canadian studies have examined Blacks' experiences with the police in Canada (see Neugebauer-Visano, 1996; James, 1998; Wortley and Tanner, 2005; Wortley and Owusu-Bempah, 2011a, b), or have examined Disproportionate Minority Contact in the Canadian context. A notable exception is a piece by Fitzgerald and Carrington (2011), who used data from a nationally representative sample of youth aged 12-17 years to test whether disproportionate contact with the police was due to differential involvement in crime, or differential treatment by the police due to increased risk factors. Their study found no support for either hypothesis; instead, the authors suggest, like Wortley and Tanner (2005) before them, that disproportionate minority contact with the police was due to racially discriminatory policing practices (Fitzgerald and Carrington, 2011: 473). Fitzgerald and Carrington do note, however, that the debate over the causes of Disproportionate Minority Contact in Canada is not over, and they stress the need for more comprehensive data (2011: 473-5).

Access to appropriate data is a major factor hindering progress in determining the causes of Disproportionate Minority Contact with the police in Canada. Although the Toronto Police Service – like services in Ottawa, Montreal, and Edmonton – collect race-based data from civilian interactions and on suspects and victims in criminal cases, the mandates of these organizations do not require that such data be made readily available to the public (Wortley, 1999; Wortley, 2003; Miller and Owusu-Bempah, 2011). In fact, until late 2010, the Toronto Police Service Board had an official policy prohibiting the release of race-based data by the Toronto Police Service (Owusu-Bempah, 2011). The Toronto Star's court battles over access to data provide evidence of the reluctance on the part of police services to release race-based

statistics. The de facto ban over the release of racial data, which extends throughout the Canadian criminal justice system, is reflective of a broader Canadian sentiment (Owusu-Bempah and Wortley, 2014). Unlike our American neighbours, Canadians are uncomfortable discussing race and racial differences, preferring instead to use the language of ethnicity and culture. This reluctance to discuss race is evident in the history of the Canadian census that for decades used ethnic categorizations as a proxy for measuring race (Thompson, 2010). The Canadian government also uses the term "visible minority" to refer to the country's non-white, non-Aboriginal populations. This moniker masks immense differences among those considered "visible minorities," and also serves to obscure the practice and effects of racial discrimination in Canadian public institutions.

It has been argued that Canada's official policy of multiculturalism – rather than protecting the interests of minorities – provides a convenient veil behind which discrimination continues to flourish. As Henry and Tator make note:

> ...multiculturalism as an ideology has provided a veneer for liberal-pluralist discourse, in which democratic values such as individualism, tolerance, and equality are espoused and supported, without altering the core of the common culture or ensuring the rights of people of colour (2005: 50).

The lack of readily available data, combined with a reluctance to investigate allegations of racism in policing, has contributed to a relative dearth of Canadian academic literature on the matter (relative to the United States and United Kingdom, for example). Because data are hard to come by, issues of racial disparity and racial discrimination in policing seem like foreign problems to many Canadian academics, politicians, policy makers and members of the public alike. For example, few would readily accept the fact that Black people are more likely to be stopped and searched by the police in Toronto than African Americans are to be stopped and frisked by the police in New York. However, this is exactly what the available data illustrates

(Rankin et al., 2013). So while we know that Black men are over-represented in police stop and search practices in Toronto and often view the police negatively (Neugebauer-Visano, 1996; James, 1998; Wortley and Tanner, 2005; Wortley and Owusu-Bempah, 2011b), we still know relatively little about the causes of these racial disparities, which factors shape the nature of police interactions with Black males, or how Black men feel about their experiences with the police. Furthermore, we know very little about within group differences among Black males with respect to their perceptions of and experiences with the police.

Main Aims and Contributions of the Present Research

The police need cooperation from members of the public in order to effectively control crime (Tyler and Fagan, 2008). This cooperation involves citizens obeying the law and working with the police to combat crime (i.e. acting as a witness and providing information) (Tyler and Fagan, 2008). Members of the public will only cooperate with the police if the police are viewed as legitimate authorities who are entitled to be obeyed. Such legitimacy is produced, in part, by the manner in which the police treat members of the public during police-citizen encounters (procedural justice) (Tyler and Fagan, 2008). So, the negative police treatment of Black men, and the negative perceptions of the police that these interactions produce (not only among Black men, but also entire communities), may thus impact community safety by influencing citizens' willingness to cooperate with the police. Thus, the very policing practices employed in marginalized neighbourhoods to combat crime might actually have the opposite effect, reducing police legitimacy and thus contributing to criminal behaviour and an uncooperative public.

The aim of this thesis is to provide an in-depth and more comprehensive examination of Black males' perceptions of and experiences with the police in Toronto. While I acknowledge

that an examination of the causes of observed racial disparities in police contact is important, I believe it is also important to investigate the complexity of police interactions with Black males in order to gain an understanding of what exactly takes place during these involuntary encounters (see Brunson, 2010). In doing so it may become possible to identify the conditions that account for Black peoples' high levels of dissatisfaction and negative experiences with the police, and better understand how these relationships can be improved (Stewart et al., 2009). The focus of this thesis is on the perceptions and experiences of Black males, precisely because this group has the most frequent and most negative encounters with the police (Skolnick, 1966; Jones-Brown, 2007).

An equally important aim of the thesis is to contribute to the extant literature, which will be achieved in three main ways. First, the thesis is comprised of three studies capturing very different groups of Black men – something rather distinctive to the present research. The first study involves a representative sample of adult Torontonians. The analysis of views and experiences of this random sample of adults from across Toronto is followed by an examination of the views and experiences of a group of over 300 young Black men drawn from four of Toronto's most disadvantaged neighbourhoods who have been in, or are at risk of, conflict with the law. The third and final sample involves a group of 51 Black male police officers. By incorporating these three distinct samples, I am able to compare and contrast the views and experiences of three very different groups of Black men in order to uncover similarities and differences in their views and experiences with the police. These three groups together yield information on a larger number of Black citizens than is typical of other studies that are both quantitative and qualitative in nature.

Second, this thesis contributes to the extant literature by documenting the views and experiences of Black male law enforcers. Very few studies have focused on the experiences of Black police officers (see Alex, 1969; Leinen, 1984; Holdaway and Baron, 1997); fewer still have examined, in depth, Black officers' perspectives on the policing of Black communities (see Bolton and Feagin, 2004). I believe that Black male police officers have a unique perspective from which to comment on the policing of Black men because they are familiar with being policed as Black men, as well as policing Black males. As such, their perspectives are of great value, especially when compared and contrasted with those of other Black males, including the views of the young Black men, the group most targeted by the police. Finally, the mixed methods approach utilized in this thesis allows for the inclusion of both descriptive quantitative data, useful for testing relationships between variables, and rich qualitative information, useful for providing context and meaning to the quantitative results.

Organization of the Thesis

This thesis consists of six chapters including the introduction. In Chapter Two, I present a review of the literature documenting Black males' perceptions of, and experiences with, the police. Chapter Two also provides an overview of the theoretical framework employed in the thesis. Here, I first review the theoretical orientations previously employed to examine Black citizens' perceptions of and experiences with the police, including those from social conflict and social disorganization perspectives. I next provide an account of how critical race theory can be used to examine the policing of Black males in Toronto, paying particular attention to the historical development of the concept of race, how Blackness has become associated with crime and danger, and the resultant impact on the contemporary policing of Black men. In Chapter

Three I utilize data from a representative sample of Black, Chinese, and White adults from the Greater Toronto area to examine racial and gender differences in perceptions of and experiences with the police. Here, a special emphasis is placed on the perceptions and experiences of Black males within the sample. The chapter illustrates that Black men are more likely than members of other racial/gender groupings to be stopped and searched by the police, and to feel negatively about their treatment at the hands of the police. Furthermore, the chapter shows that these frequent, negative experiences increase perceptions of police bias amongst both Black males and Black females, illustrating the importance of vicarious experience with the police.

Chapter Four presents data analysis from an evaluation of a gang intervention and prevention program (Prevention and Intervention Toronto) that explores the attitudes and experiences of young Black men from four of Toronto's "priority neighbourhoods."[5] Here, the results of quantitative analysis of the young men's perceptions of the police are presented along with their qualitative descriptions of their treatment. The findings from this chapter illustrate that these young Black men experience very high levels of police stops and searches, and report being subjected to verbal and physical abuse at the hands of the police. The findings also show that these young men have very negative attitudes towards the police with respect to police performance, and perceive high levels of police bias and corruption. Finally, the multivariate analysis presented in this chapter shows that negative experiences with the police increase negative perceptions of the police, while positive experiences have only a marginal impact. The multivariate analysis further shows that perceptions of the police are also related to the youth's perceptions with regards to education and employment; those youths with positive attitudes

[5] The priority neighbourhood designation has been given to 13 of Toronto's 140 neighbourhoods. At the time of designation these neighbourhoods lacked critical services and facilities (e.g. community centres and libraries) and housed a disproportionate level of high needs populations (e.g. children and immigrants). These neighbourhoods were also characterized by high levels of crime and disorder. More information about the "priority neighbourhoods" is provided in Chapter Four.

towards the police also report positive attitudes towards education and employment (and vice versa), indicating a possible relationship between the young mens' views of different social institutions.

In Chapter Five I present the analysis of data from a sample of Black male police officers from the Greater Toronto Area. The findings of the analysis of the police officers' perceptions of police bias and the policing of Black communities in Toronto are presented here. Also discussed are the officers' experiences in policing Black communities, and their suggestions to improve strained relations. In this chapter I show that the Black male police officers hold similar views to the other groups of Black males, believing the police to be biased against Black men and Black communities. The officers also report having witnessed the differential treatment of Black men in the course of their duties. Importantly, these officers hold a nuanced understanding of why this differential treatment takes place; much like the debate over Disproportionate Minority Contact, the officers attribute the differential treatment to both bias on the part of police officers, and the increased involvement of Black men in certain types of crime. Finally, in Chapter Six, I provide a summary of the important findings of this research, and discuss similarities and differences in the perceptions and experiences of the three groups of Black males. In Chapter Six I also present the theoretical implications of the research findings, relating the findings of this Canadian study to previous research from the United States and United Kingdom. Here, I explain the similarities in Black males' perceptions of and experiences with the police in these three countries by reference to their respective colonial histories, as suggested by critical race theories. This chapter ends with a discussion of suggested areas for future research, and with several policy implications emanating from the thesis.

CHAPTER 2
THEORETICAL FRAMEWORKS

Public perceptions of the police are an important social issue. Previous research has shown that citizens' views of the police are shaped by the nature of both personal and vicarious experiences (Weitzer, 2010). This body of research has also consistently found that citizens' attitudes towards the police are influenced by racial background (Weitzer, 2010). However, the vast majority of these studies have been empirical in nature and have failed to theoretically account for observed racial differences in both perceptions of and experiences with the police (Bolton and Feagin, 2004; Warren et al., 2011). The aim of this chapter is to situate the present study within the existing body of literature that has examined racial differences in citizens' perceptions of and experiences with the police, and to lay out a theoretical framework for the thesis. The chapter begins by explaining why citizens' attitudes towards the police are a matter of public concern. Next, the chapter reviews the theoretical orientations previously employed to account for racial differences in perceptions of and experiences with the police. The following section of the chapter presents an overview of Critical Race Theory which is used to frame the thesis. The fourth and fifth sections of the chapter review the specific individual and contextual level variables known to influence perceptions of and experiences with the police, and introduce the reader to previous Canadian research in the area. The chapter concludes with a presentation of the research questions and a brief overview of the mixed methodology utilized in the thesis.

The Importance of Examining Perceptions of and Experiences with the Police

Public perceptions of the criminal justice system are important for a number of reasons. First of all, the criminal justice system is the cornerstone of a democratic society, and citizen

confidence in this institution is necessary for democracy to flourish. On the other hand, negative attitudes towards the criminal justice system can lead citizens to question the legitimacy of both the justice system and the state itself (Brunson & Miller, 2006: 632). Citizens' perceptions of police legitimacy are formed, in part, by the manner in which the police treat members of the public during police-citizen encounters. If citizens are treated unfairly by the police, they are less likely to view the police as a legitimate authority (Tyler and Fagan, 2008). Perceptions of illegitimacy can have two important implications for criminal justice and society at large. First of all, the criminal justice system and the general public have an interdependent relationship. The general public is reliant on the system to fight crime and punish offenders, but the system is dependent on the public to bolster its legitimacy, and also to properly administer justice. Without confidence in the system, citizens become alienated and reluctant to cooperate with the police and the courts as victims, witnesses, complainants, and the accused. Such a situation would thwart the efforts of the police to control crime and maintain social order (Decker & Smith, 1980; Murty et al, 1990; Kaukmen & Colavecchia, 1999).

Secondly, there is growing concern that perceived injustice itself causes criminal behaviour (Tyler, 1990; Lafree, 1998). Russell (1996), for example, argues that perceptions of criminal injustice and "unfair penalties, combined with a lack of sanctions for race-based harms, diminishes faith in the justice system, which in turn sets the stage for criminal offending." Likewise, negative views of the police can lead to social unrest. The riots of the 1970s and 1980s in such places as London, Bristol and Birmingham in Great Britain, and those of the 1980s and 1990s in Miami and Los Angeles in the United States, are clear evidence of this. Each of these riots was a result of negative perceptions of the police held primarily among racial minority groups. The British riots were sparked by oppressive, intrusive and heavy handed policing in

Black communities, while the Miami and Los Angeles riots were sparked by police beatings of racialized men (Murty et al., 1994). Such instances highlight the importance of positive public attitudes towards the police, and the critical role that police treatment plays in the development of police legitimacy and attitudes towards the police more generally.

Criminological Perspectives on Race, Crime and Policing

Although research has consistently shown that Black citizens are disproportionately stopped, searched and arrested by the police – and that they hold more negative attitudes towards the police than members of other racial groups – very few of these studies have been theoretically driven (Chan, 2004; Bolton and Feagin, 2004; Warren at al., 2011). Nevertheless, accounting for these racial differences has been a point of debate among academics, especially within the American literature (Wilbanks, 1987; Wilson and Herrnstein, 1985; Mann, 1993; Herrnstein and Murray, 1994; Tonry, 1995). As noted in the previous chapter, explanations for the over-representation of Black and other racial minorities within the justice system are often framed in terms of "Disproportionate Minority Contact," and exist on a continuum. To reiterate, the main perspectives along this continuum include: 1) the differential involvement hypothesis; 2) the differential selection and processing hypothesis (bias/discrimination model); and 3) the mixed model hypothesis (Piquero, 2008: 63-7). Some scholars have also employed traditional criminological theories to account for racial differences in policing outcomes and citizens' attitudes towards the police. These theories are drawn from biological, sociological and

psychological perspectives. Below, I present a brief review of these theories as they fit within each of the three perspectives of the Disproportionate Minority Contact paradigm.[6]

The Differential Involvement Hypothesis

The Differential Involvement Hypothesis holds that racial minorities are over-represented in criminal justice outcomes because they commit more crime for extended periods of their lives, and are more likely to be involved in the serious types of crime that result in official criminal justice processing (Piquero, 2008: 64). Therefore, any observed racial differences in citizens' levels of contact with the police are reflective of racial differences in levels and types of criminal offending. Some of the earliest criminologists concerned themselves with explaining racial differences in criminal behaviour. Cesare Lombroso, for example, often considered one of the fathers of criminology, explained these differences from a biological perspective. Influenced by the writing of Darwin, Lombroso applied Darwinian theories to the study of army personnel in southern Italy, concluding that the citizens of this region were not only inferior human beings, but also "lazy, incapable, criminal and barbaric" (Vold et al., 1998: 42-3). Lombroso based this assessment on the belief that the presence of Africans and "Eastern elements" contributed to the regional inferiority that he observed (Gabiddon, 2007: 10). In his book *The Criminal Man* (1876), Lombroso put forth the argument that the races could be ranked in a hierarchy, and that inferior races could be distinguished by their asymmetrical physical features and inferior intellect (Lombroso1876; Webster, 2007:13).

Lombroso believed that criminals were evolutionary throwbacks, atavistic in nature, and explained white criminality by way of reference to the more 'primitive races.' Throughout his

[6] It should be noted that this summary by no means represents an exhaustive review of all the theories related to race, crime and criminal justice. For a full review see Gabbidon, S. (2007) *Criminological Perspectives on Race and Crime.* New York: Routledge.

work, Lombroso made clear the importance of race in explaining criminal behaviour. More modern biological theories based on evolution, genetics and intelligence include the works of Herrnstein and Murray (1994) and Rushton (1997). The main argument of these works is that Black people (and some other racial minorities) are biologically (or genetically) inferior – in other words, these theorists maintain that certain racial groups are less evolved, less intelligent, more aggressive, and more impulsive than others. These biological traits, in turn, are said to contribute to these groups' over-involvement in crime and over-representation in the criminal justice system. Although not always explicitly stated in this body of research, Blacks' perceptions of and experiences with the police can be explained by their increased contact with the police, which is due to their high levels of involvement in crime. It should be noted that many theories of crime emanating from a biological perspective have largely been refuted and have lost favor, being replaced by sociological and psychological perspectives (see Roberts and Gabor, 1990).

Sociological perspectives on race and crime focus on societal and structural factors known to cause criminality. The work of W.E.B. Du Bois paved the way for sociological research on crime in general and on race and crime in particular (Gabbidon, 2007: 51). Du Bois studied the high levels of crime amongst Blacks in Philadelphia, and later Atlanta, around the turn of the 20th century. He concluded that mass migration from the rural South to the urban North created adjustment problems for Black people, and that these adjustment problems sometimes led to criminal behaviour (Gabbidon, 2007: 51). Du Bois also highlighted variables such as age, unemployment, poverty, and discrimination as significant factors leading to criminality. Importantly, in the context of this thesis, Du Bois noted that Black people were arrested for less cause than whites (Gabbidon, 2007: 51). Some of Du Bois' ideas were taken up

by the "Chicago School" sociologists. Specifically, social disorganization theory and the ecological approach – developed by researchers at the University of Chicago in the 1920s – explained increasing levels of crime by referencing immigration and immigrant re-settlement patterns. Immigration, it was argued, caused a breakdown of informal social control that resulted from high rates of population turnover – and high crime rates – in certain areas of Chicago (Gabbidon, 2007: 56). In addition to fluctuating populations and impoverished residents, these socially disorganized areas had higher percentages of Negro (Black) residents (Gabbidon, 2007: 56). More contemporary research has confirmed the importance of concentrated inequality and physical/social isolation in contributing to crime and violence amongst Blacks (Wilson, 1987; Sampson, 1987; Sampson and Groves, 1989; Sampson and Wilson, 1995). Furthermore, it has been argued that Black residency in socially-disorganized, high-crime neighbourhoods can at least partially explain this group's high level of contact experiences with the police.

Other studies on race, crime and policing have employed social strain theories to explain high rates of offending Blacks. This perspective points to the strain caused by the disjuncture between culturally defined goals and one's ability to achieve these goals as a cause of criminality (Merton, 1938: 672-3). Merton (1938), a founder of this perspective, argued that some individuals who are not able to achieve culturally desirable goals through legitimate means will resort to alternative (illegal) means of doing so. Merton recognized that Black people experience acute strain as a result of internalizing socially desirable goals, while at the same time being systematically blocked from legitimately achieving these goals due to the existence of widespread and institutionalized racial discrimination. He wrote:

> Certain elements of the Negro population have assimilated the dominant caste's values of pecuniary success and advancement, but they also recognize that social ascent is at present restricted to their own caste almost exclusively. The pressures upon the Negro which would otherwise derive from the

> structural inconsistencies we have noticed are hence not identical with those upon lower class whites. (p. 680)

Merton understood that the social position of Black people in the United States greatly limited their access to legitimate opportunities, and that they could not thus achieve the same status position as whites (Gabbidon, 2007: 69). As a result, some Black people would turn to criminality in an attempt to achieve these goals ("innovators") while others would eschew them all together ("retreatists") (Merton, 1938; Gabbidon, 2007). These retreatists, Merton argued, are "*in* society but not *of* it," meaning that they do not share the same common goals or value systems as the general population (Merton, 1938; Gabbidon, 2007). Recent tests of strain theory have produced mixed results amongst white, Black and Hispanic populations (Cernkovich et al., 2000; McCluskey, 2002).

Subcultural theory is another sociological perspective which has argued that Black offending is rooted in economic disadvantage. Subcultural theory suggests that the experience of systematic social exclusion and blocked occupational opportunities results in status frustration, which may in turn contribute to the development of alternative goals and value systems that conflict with middle class standards (Gabbidon, 2007: 83-100). In *Code of the Street*, for example, Anderson (1999) argues that, as a result of their alienation, Black people in many impoverished inner-city communities have developed an oppositional culture with its own value system. This alternative value system puts a premium on respect, and the use of inter-personal violence to defend oneself and one's reputation against personal attacks. As a result, levels of inter-personal violence are high in these neighbourhoods, resulting in an increased police presence and a higher level of police interaction with neighbourhood residents. Likewise, the subculture of violence theory attributes the over-representation of African Americans in violent

crime statistics to an alternative value system that views physical aggression as a socially acceptable response to certain stimuli (Wolfgang, 1958; Curtis, 1975; Silberman, 1978). Recent tests have provided limited support for subcultural theories, leading some to suggest that the continued use of these theories to explain racial differences in violence is both unfair and potentially racist (Cao et al., 2000, 58 as cited in Gabbidon, 2007: 99).

In sum, these theories attribute Blacks' over-representation in police and other justice statistics to elevated levels of offending caused by either individual (biological/genetic) or social (disorder/strain/sub-cultural) factors. On the other hand, theories that can be grouped under the *differential selection hypothesis* attribute Blacks' over-representation in police statistics to discrimination and bias on the part of the police.

Differential Selection Hypothesis

The Differential Selection Hypothesis asserts that a combination of differential selection (differing police presence, patrolling and surveillance activities) and differential processing (differences in the application of discretion, for example) result in Black people having more contact with the police, and being formally processed at higher rates than white people. This hypothesis argues that Blacks are discriminated against by the police and receive harsher treatment than do other citizens, thus explaining their over-representation in policing statistics and their negative appraisals of the police (Piquero, 2008:65). Some of the theories reviewed above are also relevant in the context of differential selection. For example, scholars have argued that the police tend to be more aggressive and punitive in socially disorganized neighbourhoods. Police often perceive these neighbourhoods as "bad areas," and also perceive the residents and their behaviours as suspicious (Bayley and Mendelsohn, 1969; Stewart et al., 2009). This

perception of these areas as more dangerous and risky may prompt officers to act more aggressively with neighbourhood residents in order to maintain control and ensure their own personal safety (Stewart et al., 2009). The police may also act in a discriminatory and aggressive manner in disorganized and impoverished neighbourhoods because they perceive the residents to lack agency or a means of recourse in dealing with police misconduct (Weitzer and Tuch, 2006).

Conflict theories have also been used to examine discrimination in the administration of justice by focusing on the way in which power struggles between different individuals and groups influence who is policed, and how (Gabbidon, 2007). As early as 1901, Du Bois published an article explaining how the convict lease system in the American South promoted the enactment of laws designed specifically to draw Black people into the criminal justice system. This early criminalization process was established in order to replace the free labour of slaves and to maintain the privileged status of Southern white landowners (Gabbidon, 2007). More recently, the conflict perspective has been applied to the phenomenon of racial profiling to help explain the over-representation of Blacks in traffic and pedestrian stops by the police (Weitzer and Tuch, 2002; Wortley and Tanner, 2005). Many of the race-based articulations of conflict theory have their roots in social threat theories, asserting that culturally dissimilar minority groups are perceived as a threat to the established social order, and that the police are employed to control such threats (Liska, 1992; Blauner, 1972). Racial threat theories suggest that the social control of racial minorities, including discriminatory police treatment, will increase as the relative size of the minority population increases (Jacobs and O'Brien, 1998). As such, Black people may be subject to the greatest levels of police discrimination in neighbourhoods where they comprise a relatively large or increasing proportion of the population (Stults and Baumer,

2007 in Stewart et al., 2009). In addition to these sociological explanations, a number of psychological perspectives have been utilized to explain police discrimination against Blacks.

Research on cognitive and implicit bias provides another perspective useful for understanding Black males' experiences with the police. Implicit bias refers to the attitudes and stereotypes that influence our understanding, actions, and decision-making processes in an unconscious manner (Staats and Patton, 2013). Implicit biases, as the name suggests, are activated unconsciously and without control, and may be transmitted or produced through visual media (Staats and Patton, 2013; Weisbuch et al., 2009). Excessive news coverage portraying Blacks as criminal, for example, can lead to the formation of implicit bias (Staats and Patton, 2013). Research with police officers has examined implicit bias in law enforcement settings. Eberhard et al. (2004) presented pictures of white and Black faces to police officers and asked the officers to choose which face looked criminal. They found that the officers chose the Black faces over the white ones, particularly when the Black face had stereotypically Black features. Automatic implicit bias has also been found to negatively influence officers' interpretations of Blacks' behaviour (as suspicious or aggressive), and the perception of Blacks as more blameworthy, thus meriting harsher sanctions (Graham and Lowery, 2004; Richardson, 2011).

Importantly, research with both police officers and ordinary citizens has shown the strong association that exists between Blackness and the assumed presence of weapons – often referred to as shooter or weapons bias (Staats and Patton, 2013). In these studies, participants were more likely to identify guns when primed with a Black rather than a white face, and to shoot unarmed Black suspects more often than unarmed white suspects (Payne, 2001; Correll et al., 2002). When patrolling Black neighbourhoods or interacting with Black citizens, police officers may therefore unwittingly rely on racial stereotypes about Blacks, associating them with crime and

violence. This may influence the types of actions they take when encountering a black civilian on the street.

Finally, the differential police treatment of Black people and other racial minorities may result from racial animus or overt and intentional racism. Although many police services have official policies prohibiting racist behaviour, we cannot automatically assume that decisions to stop, search, arrest, and use force will not be influenced by individual racism. This is particularly true when we consider that racism has been identified as a key feature of the conservatism that typifies the police occupational culture (Reiner, 2010: 129).

The Mixed Model Hypothesis

A third and final perspective suggests that Blacks' over-representation in police statistics is a product of both differential involvement in crime and differential processing/selection by the police (Piquero, 2008:67). Indeed, it is very likely – in light of the theories reviewed above – that Black people are involved in a disproportionate amount of crime because they are disproportionately exposed to those factors known to increase the likelihood of criminal offending (poverty, unemployment, social disorganization, discrimination, social/economic/political marginalization, etc.). Likewise, there is ample evidence to believe – as some police services have themselves publicly admitted – that racially biased policing exists (Owusu-Bempah and Wortley, 2014). It should also be acknowledged that the relationship between differential involvement and differential selection is cyclical. For example, the police may be disproportionately deployed in Black neighbourhoods because of very real problems with violence and disorder. Yet when patrolling these neighbourhoods, officers come to view all residents with suspicion, stopping and searching individuals with less cause than they would in

other neighbourhoods. At least some of these encounters are likely to produce contraband or other offences that would have gone unnoticed in other areas. The discovery of these new crimes could ultimately reinforce the perceived efficacy of focusing policing on minority communities in general, and on minority males in particular (Harris, 1999).

Taken even further, it can be argued that differential selection (as a result of some form of bias/discrimination) can contribute to differential involvement in crime. The over-policing of Black citizens/neighbourhoods is well documented (Rice and White, 2010; Bowling and Phillips, 2007; Owusu-Bempah and Wortley, 2011). If law-abiding Black citizens are frequently harassed and disrespected by the police, these citizens may come to view police authority as illegitimate, which has been shown to increase the likelihood of criminal offending (Tyler and Fagan, 2008). Alternatively, the police may create crime during encounters with law-abiding citizens. Consider the hypothetical example of a law-abiding young Black man who is frequently stopped by the police as he goes about his business. Eventually, this young man is likely to become tired of the police stops, perhaps exhibiting signs of disrespect during the encounter, or worse, objecting to a search of his person. In doing so the young man could be arrested for obstructing justice, assaulting a police officer, or failing to comply with an officer's directive (Engel et al., 2010). If convicted, this young man is now saddled with a criminal record for "crimes" created by the police. Going forward, the young man is likely to be blocked from legitimate avenues for success due to his criminal record, and thus may resort to crime as a means of survival. The police, then, have turned a law abiding citizen into a criminal through the differential selection and processing of Black people. The "crimes" this individual has committed will also be documented in official police statistics, providing further support for the notion that Black people are more criminal. The entire process thus contributes to a self-fulfilling prophecy.

Theoretical Shortcomings

As Piquero (2008) notes, limitations on available data make it difficult to assess how much weight to attribute to each of the above perspectives. In other words, it is difficult to determine whether differential involvement or differential selection contribute more to the over-representation of Black people in policing statistics. Nevertheless, by identifying individual, sociological and psychological factors, the theories documented above are useful in helping to understand the mechanisms that influence Blacks' experiences with the police. However, I feel that a more over-arching theory is necessary to better understand Black people's perceptions and experiences, and to further contextualize other theoretical orientations – a theory that takes into account the historical development of race as a social category, and its influence on social relations in both historical and contemporary contexts,. In the past, when a historical perspective has been taken to account for Blacks' experiences with the police within the mainstream criminological literature, it is usually to trace the roots of modern policing in the United States to the formation of slave patrols in the South following the emancipation of Black slaves (see for example Jones-Brown and Maule, 2010). While such an account might be insightful in the American context, it is hardly appropriate when it comes to explaining Blacks' perceptions of and experiences with the police in present day Toronto, Canada. Canada has a very different history with regard to race relations than the United States (especially in the context of the traditional Black-white dichotomy that dominates much of the U.S. literature/discussions about race relations).

Furthermore, I feel that previous empirical work and related theorizations fail to account for how and why "race" developed as a meaningful social category, and how this might help explain present day similarities in the policing of Black men in countries such as Canada, the

United States, and the United Kingdom – each of which is experiencing similar problems with regards to police-race relations (see Weber and Bowling, 2012). Chan (2004), for example, acknowledges that "one of the contributing barriers to explaining the complexities of racism in the criminal justice system is the uncritical acceptance of 'race' and racial categories" (108). A similar point has been made by Holdaway (1997), who argues that within the criminological literature, there exists an absence of a critical consideration of how race is conceptualized, and a related lack of debate over the theoretical foundations upon which most empirical studies of race within criminology are based (384). Likewise, Bolton and Feagin (2004) suggest that there is often a lack of clarity regarding the definitions of key concepts including race, racism, and discrimination in the empirical studies on race and policing (Bolton and Feagin, 2004: 24-5). In order to address such concerns, I employ Critical Race Theory as the overarching theoretical framework in the present work.

Critical Race Theory and the Policing of Black Men

Critical Race Theory (CRT) and its subsequent application in Russell's (1992) *Black Criminology*, along with Phillips and Bowling's (2003) *Minority Perspectives,* provides further theoretical direction with respect to understanding Black males' perceptions of and experiences with the police. CRT emerged from American law schools in the 1980s, drawing much of its intellectual tradition from the Critical Legal Studies paradigm and Civil Rights scholarship (Delgado & Stefancic, 2001). Critical race theory examines the relationship between race, power, and the law, recognizing racism as deeply rooted within multi-racial societies. Critical race theorists view racism as both normal and functional (Delgado & Stefancic, 2001). According to

CRT, racism is normal because it influences the way in which society usually operates[7]. It is also a common, everyday experience for most people of colour. Racism is functional because it serves both psychic and material purposes by advancing the interests of whites – of all social classes – at the expense of other races. Furthermore, CRT scholars understand race as a social construct – a product of social thought and relations rather than a biological reality. In recognizing race as a social construct, critical race scholars also acknowledge that differential racialization occurs – that is, society assigns different characterizations and attributes to different groups at different times to serve different purposes (Delgado & Stefancic, 2001). Rather than embracing a colour-blind approach to equality, critical race theorists situate race as central to understanding how racial stratification continues to influence the lives of racialized people, while at the same time maintaining white privilege and supremacy (Phillips and Bowling, 2003). In the context of the present project, this would include an understanding of the role that the police play in maintaining white hegemony. By placing race at the centre of the analysis, critical race theory can further highlight the structural inequalities that exist within Canadian society, as well as the way in which Black Canadians have come to be viewed and understood in racial terms. Both of these realities influence and shape Black people's relationships with the police.

Race and Structural Inequality

Black males' contemporary experiences with the police cannot be understood without historical contextualization. Paulhamus et al. (2010) contend:

> ...considering the difficulty of isolating racial profiling outcomes from the larger social and organizational processes that likely drive much of the racial disparities observed in policing outputs, it seems artificial and theoretically simplistic to examine racial profiling as if it exists in a contextual vacuum...

[7] Rather than being an aberration.

> Thus, to effectively study and assess racial profiling outcomes, it seems necessary to understand the processes that lead to the conditions that produce the racial conflict in the first place" (250).

In order to address the above point effectively, we need to consider and understand how race emerged as a meaningful social category, and develop a full appreciation of its historical and contemporary impact on people's lives. Indeed, race and ethnicity are not ahistorical essences (Phillips and Bowling, 2003), but rather concepts "rooted in a particular culture and a particular period of history" (Banton, 2009:67). Early (biological) theories of race were developed at the time of European exploration, colonization and the emergence of the trans-Atlantic slave trade. These theories allowed Europeans to come to terms with the physical differences that they observed in the populations they encountered, and provided a rationalization for their subsequent treatment of non-white people. This latter point is well articulated by Montagu (1963), who argues that: "the idea of race [and of racial superiority] was developed as a direct response to the exploitation of other peoples, to provide both a pretext and a justification for the most unjustifiable conduct, the enslavement, murder, and degradation of millions of human beings" (111). As Khenti (1996) also points out, a common feature of all racial categories was their descending order of classification with Caucasians (whites) at the top, Africans (Blacks) at the bottom, and the other groups falling in between (55).[8] According to early scientific theories of race, white Europeans – at the top of the racial hierarchy – were civilized, while Blacks and others at the bottom (such as Aboriginals) were viewed as inferior; as savage, uncivilized, and of a lower order.

This history is important to the present project because these ideas of racial difference were used by the British and French to justify the settlement and colonization of the territories

[8] Even in those categorization schemes where whites are not at the top of the hierarchy (e.g. that proposed by Philippe Rushton), the supremacy of whites is implied by their being more balanced, or occupying a middle ground vis-a-vis other racial groups (Rushton, 1997).

that would become Canada. In order to assert their sovereignty and control over Aboriginal lands, Europeans employed the notion of "terra nullis," arguing that because the "savage" Indians were not using the land as the civilized Europeans would, it was empty and free for the taking (Henry and Tator, 2005: 107). White Europeans subsequently settled Canada, and established a system of laws designed to manage and control Aboriginal peoples and other non-white populations (Henry and Tator, 2005). This resulted in the development of what some have termed a "racial state" in which the white population was established as the dominant class with first access to material resources, social power, privilege, and influence (Goldberg, 2001; Razack, 2002).

Thompson (2010) argues that biological racism was integral in shaping Canada's nation-building and colonial projects at the turn of the 20th century, and suggests that racist ideologies were crucial to the development of Canada as a white settler state (Thompson, 2010: 174). Canada's colonial project determined who could enter the country and under what grounds (i.e., as free person, an indentured servant, slave, etc.), and dictated the rights and privileges afforded to them. Thompson goes on to argue that – although often hidden – Canadian racial politics have long been concerned with the regulation of non-white bodies through both formal and informal mechanisms of segregation and stratification (Thompson, 2010: 175). Indeed, six of the original 16 legislators of Upper Canada's first parliament owned slaves, and the institution of slavery was practiced on Canadian soil for over 200 years (Winks, 1997; Walker, 1980; Hill, 1981; Lampert & Curtis, 1989). Although not as pervasive as in the United States, there is little doubt that slavery in the territories that would become Canada contributed to the material wealth and privilege of elite white settlers, while at the same time placing Blacks in a position of extreme social disadvantage (Wortley and Owusu-Bempah, 2011a). Black people were also subject to

racial segregation in schools and other areas of public life that further contributed to their social, political and economic marginalization (Henry and Tator, 2005; Winks, 2008). As the racist ideologies that supported such practices are deeply entrenched and woven into the very fabric of Canadian society, the historical and contemporary experience of racialized people is rooted in this history of colonialism. The system of racial stratification has long privileged whites at the expense of other races, and has resulted in the emergence and entrenchment of the dominant white power structure. This system influences the way that Canadian institutions operate (through structural[9] and institutional[10] racism), and shapes individual attitudes and social interactions (Henry and Tator, 2005)[11].

Many believe that racist thinking continues to validate the mistreatment and social marginalization of Black people in contemporary Canadian society (Jiwani, 2002). For example, the existence of white supremacist groups that oppose the presence of Blacks supports the assertion that overt anti-Black racism is alive and well in Canada (Siegel and McCormick, 2010). Such a view is also supported by data from Statistics Canada, which indicates that Black people stand out as the most common targets of race-based hate crime (Dauvergne et al., 2008; Walsh & Dauvergne, 2009). Research also suggests that Black children continue to be discriminated against in school. Black youths are more likely to be suspended or expelled, are inappropriately streamed into remedial programs, and are less likely to graduate than students from other racial groups (Cladas et al., 2009; Codjoe, 2001). Blacks also continue to face discrimination in the housing and employment sectors (James, 2009; Mendez et al., 2006). Research by Swidinsky

[9] Structural racism refers to: "inequalities rooted in system-wide operation of a society that exclude substantial numbers of members of particular groups from significant participation in major social institutions" (Henry and Tator, 2005: 352).
[10] Institutional racism refers to: "racial discrimination that derives from individuals carrying out the dictates of others who are prejudiced or of a prejudiced society" (Henry and Tator, 2005: 352).
[11] Individual racism refers to: "a form of racial discrimination that stems from conscious, personal prejudice (Henry and Tator, 2005: 350).

and Swidinsky (2002), for example, indicates that Black males in Canada face the largest earning deficit in comparison to other racial groups, and the lowest level of intergenerational improvement in their economic standing. The marginalization experienced by Black people, as Du Bois pointed out over 100 years ago, no doubt contributes to crime within Black communities to which the police must naturally respond (in line with the *differential involvement hypothesis* presented above) (Du Bois, 1899). Thus, Blacks' contemporary experiences with the police should be viewed in light of the emergence of race as a social category, and its place in the history of Canadian society. Indeed, the conditions conducive to crime – to which Black Canadians are disproportionately exposed – have not appeared out of nowhere.

Race and Racialization: The Making of Black Canadians

The history outlined above is also important in helping to understand how different groups have come to be classified and defined in racial terms, and what membership in a given racial group represents in the present day. As Phillips and Bowling (2003) point out, "racist ideas drawn from the philosophies of the European Enlightenment have been translated into modern ideologies of racial supremacy based on these socially constructed categories. Humanity is presumed to be divided up into distinct 'races' arranged hierarchically with 'whites' or Aryans at the top, above darker skin Europeans and Asians, who are, in turn, superior to blacks, who are seen as inherently inferior" (277-8). Just as the structural legacy of colonialism continues to influence Black Canadians' position in society, this symbolic legacy continues to influence how Black people are viewed. In the context of this thesis I draw upon Desmond and Emirbayer's (2009) definition of race as "a symbolic category, based on phenotype or ancestry and constructed according to specific social and historical contexts, that is misrecognized as a natural

category" (2009: 236). Race is symbolic because it is created and recreated by human beings – the labels and categories used to classify humans based on observed physical differences are unique to different social and historical contexts, yet in all cases are viewed as natural and unchanging.

As Desmond and Emirbayer (2009) note, Blackness, for example, was developed against whiteness in the context of British and American slavery (338). Religious, philosophical, and (later) scientific reasoning was used to support ideas about supposed biological and genetic differences between the races, which in turn justified the mistreatment and enslavement of non-whites, including Black Africans (Montagu, 1997). This may be best understood by reference to the process of racialization. The term 'racialization' is used to describe the "process of categorization through which social relations between people [are] structured by the signification of human biological characteristics in such a way as to define and construct different social collectivities" (Miles 1989: 75). Racialization, therefore, consists of the classification of people into groups by reference to their anatomical features, such as skin colour and facial features, and the making of judgments about their innate and cultural attributes and/or social worth based upon those features. Racialization creates race. Through this process, society constructs and objectifies the fallacious notion of race. It also permits the formulation of policies and procedures whereby power and resources are differentially allocated (Commission on Systemic Racism in the Ontario Criminal Justice System, 1995). The effect of this process is the creation of the racialized "other," who is subsequently excluded from the dominant social, political and economic spheres of society – as evidenced in the discussion on structural inequalities presented above.

During the period of conquest and slavery, racial taxonomies emerged and whiteness became associated with freedom, civilization and superiority, while Blackness was associated

with bondage, social death, and the uncivilized and inferior (Desmond and Emirbayer, 2009). In order to justify their mistreatment, Black people had to be dehumanized, viewed as lesser beings, or as Mills (1997) argues, seen as sub-persons. These differences were viewed as natural, innate and immutable. Over time, the scientific theories that supported such views lost favor to cultural theories that associated observed differences between the races to differences in culture (Montagu, 1963). Nevertheless, modern racial categories were firmly established by the mid 20th century, and old ideas about racial difference remained (Desmond and Emirbayer, 2009). In Canada, Black people have long been viewed as inferior. Indeed, such beliefs were used to restrict the entry of Black people into the country (as highlighted above). For example, J.S. Woodsworth, superintendent of the Peoples Mission of Winnipeg, argued in 1903 that Black people should be excluded from Canada because he felt "[the] very qualities of intelligence and manliness which are essentials for citizens in a democracy were systematically expunged from the Negro race" (Henry & Tator, 2005).

Importantly, through the processes of racialization, Black males are seen as physical threats and have come to be associated with crime and violence. According to Skolnick (1966), black people have come to be seen as "symbolic assailants" or, according to Russell (1998), the "criminalblackman." Mosher, in his historical analysis of the Ontario justice system, highlighted how Canadian newspapers routinely described the races of offenders, which "served to identify … Blacks as alien … and justified to a certain extent their differential treatment by the criminal justice system" (Mosher, 1998: 126). Media images undoubtedly have a profound influence over how the public thinks about marginalized groups, both in general terms and with regard to crime. The sheer volume of crime news that involves racialized people is enough to convince the average person that the face of crime is coloured. Available research supports this view, and

identifies Black Canadians as the group most associated with criminal behaviour by members of the general public (Henry et al., 1996). One of the most crucial points made by scholars working within a racialization framework is that the criminalization of racialized groups is dependent on the continued (re)production of particular groups as "others" (Jiwani, 2002: 82). Indeed, numerous scholars have pointed out the ways in which Blackness has been criminalized as part of the racialization process. Welch (2007) argues that it was during the 1970s and 1980s in America that the popular stereotype of the young Black man evolved from that of a petty thief or a rapist into an ominous criminal predator. The Black man came to be viewed in much the same way in Canada in the 1980s and 1990s when a wave of neoliberalism spread across the country, introducing new ways of viewing and dealing with undesirable populations (Walcott et al., 2008). Whereas Blacks were once viewed as inferior due to biological or genetic differences, they are today viewed as inferior due to cultural or moral deficiencies that include a propensity for crime.[12] The belief that Blacks are criminal helps to explain why they are treated differently by the police, even in the absence of any wrongdoing (as suggested by the *differential selection hypothesis* presented above).

The racialization of crime and the criminalization of Blackness should therefore be seen as an important tool in the social control of Black people, and in the maintenance of the established social (racial) order. As Jiwani (2002) explains: "the emphasis on policing certain groups of people and certain crimes is reflective of the social stratification system underpinning Canadian society. Those at the bottom are considered to be the most prone to crime and the least deserving, and are often perceived by the dominant society as disposed and disposable." (69) Furthermore, Jiwani points out that "through the processes of racialization, economic inequality,

[12] Other cultural deficiencies associated with Black people include being poor parents, lazy, drug addicted, and welfare dependent.

gendering, and criminalization are fundamentally interlocked and inseparable" (Jiwani, 2002: 14; Razack, 1998). Indeed, the legacy of colonialism has left Black people politically, socially and economically disadvantaged within Canadian society, which manifests itself, in part, through increased participation in crime. This criminality justifies the police response to crime in Black neighbourhoods, which is intensified by the widely held belief that Black people are inherently criminal. The structural inequalities caused by racism and a legacy of colonialism are not perceived to be the cause of crime[13]; rather, Black people themselves are seen as inherently or innately criminal. Importantly, over-policing furthers the structural inequalities experienced by Blacks by alienating them from mainstream society, by supporting the notion that they are inherently criminal, and by saddling many with the markers of a criminal record, ensuring further social exclusion (Harris, 1999). The impact of historical and contemporary racism gets lost in this process; as Desmond and Emirbayer (2009) rightly suggest, racism hides its tracks.

History in the Context of Modern Theory

Acknowledging and examining the historical emergence of race as a social category – and its influence on social relations – can help to further contextualize some of the criminological theories presented above. For example, we can see that the early biological theories linking race and crime to biological differences between the races are reflective of the period in which they were originally developed – the heyday of scientific racism. We can also understand the implicit biases exhibited by citizens and police officers in the present day as manifestations of this legacy. Likewise, we can see that the social disorganization and various types of strain disproportionately experienced by Black people are caused by structural inequalities that began with slavery and colonialism. Finally, we can view models of social and

[13] As would be predicted by the social disorganization, social strain and social conflict theories presented above.

racial conflict in terms of this history, and in an attempt by dominant (white) classes to maintain the status and material privileges gained over centuries of racial domination. Such an understanding may also help us better explain Black males' perceptions of and experiences with the police in contexts outside of the United States, where most theoretical orientations have been developed/applied. In the section below, I review the individual and contextual level factors that have been previously shown to influence citizens' perceptions of and experiences with the police.

Previous Research on Citizens' Perceptions of and Experiences with the Police

Research on citizen attitudes towards the police proliferated in the United States during the 1960s and 1970s. This was a period of immense social unrest, during which racial tensions were high and clashes between the police and the public – often Black citizens – were commonplace. The rioting and disturbances that pitted Black citizens against the police resulted in publications such as Zeit's (1965) "*Survey of Negro Attitudes towards the Law,*" and the establishment of commissions such as The President's Commission on Law Enforcement and the Administration of Justice (1967). These initial works stimulated the development of a large body of research examining citizen's attitudes toward, and experiences with, the police. Such studies have typically examined differences between Blacks and whites with regard to their evaluations and opinions of the police. However, these studies have more recently expanded to include the views of Hispanics and other racialized groups (Hagan and Albonetti, 1982; Weitzer and Tuch, 2006; Schuck et al., 2008). Below I present a review of the research that has examined the various individual and contextual-level variables that have been shown to influence perceptions

of and experiences with the police.[14] Although these variables are grouped under distinct sub-headings, it is important to note that there are interactive effects between these variables (e.g. race, class, age, and area of residence) that shape citizens' perceptions and experiences (Brown and Benedict, 2002: 543).

Individual-Level Variables

Race: The importance of race in structuring citizens attitudes and experiences with the police has been confirmed by many studies in the U.S (Zeit, 1965; Bayley and Mendelsohn, 1969; Decker, 1981; Leiber et al., 1998; Brunson and Miller, 2006; Gabbidon and Higgins, 2009), Great Britain (Skogan, 1990; Jefferson and Walker, 1993; Sharp and Atherton, 2007), and Canada (Henry, 1994; Wortley, 1996; Wortley et al 1997; Wortley and Owusu-Bempah, 2009). One of the most consistent findings emerging from this line of research is that Black people hold more negative perceptions of the police than do members of other racialized groups (Brunson, 2007). This finding is true not only for the U.S, where the majority of this research has been conducted (Smith et al, 1999; Cheurprakobkit, 2000), but also for Great Britain (Jefferson & Walker, 1993; Holdaway, 2003) and Canada (Wortley 1996; Wortley & Owusu-Bempah, 2009). Some of the factors that account for Blacks' negative views of the police are presented below.

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[14] It should be noted that American research is heavily relied upon throughout this review because most of the research in this area has been conducted there. However, it is important to acknowledge that, although Canada and the United States share a border, there are many differences between the two countries, especially in terms of racial issues. For instance, Canada does not share the same history of deep-seated divisions between racial groups, particularly between Blacks and whites, with the United States. Furthermore, the Black population in the U.S. is both larger and longer standing than Canada's – the majority of Black Canadians (especially in Toronto) are first, second or third generation immigrants (mostly from the Caribbean). Canada also has an official policy of multiculturalism, the avowed intention of which is to embrace diversity and protect the rights of "cultural groups." Provided these and other differences are acknowledged, U.S. research can prove useful in helping to understand police-race relations in Toronto.

Socioeconomic Status: Socioeconomic status (SES) and race are presented sequentially here because much of the previous research in the area indicates that the impact of class on citizens' perceptions of and experiences with the police are influenced by race (Brown and Benedict, 2002; Weitzer, 2010). Studies investigating the impact of SES on perceptions of the police have produced mixed results. For example, several studies have found that individuals reporting lower SES have more negative attitudes toward the police than individuals who are better off economically (Benson, 1981; Cao et al. 1996; Huang and Vaughn, 1996). In contrast, Block (1970), Davis (1990) and Parker et al. (1995) found no relationship between SES and attitudes towards the police. Conversely, research by Gamson and McEvoy (1970), Murphy and Worral (1999), and Weitzer and Tuch (1999) has shown that respondents reporting higher SES have more negative attitudes towards the police than those reporting lower SES. Hagan and Albonetti (1982), for example, found that negative perceptions of the police increased with SES for Black respondents – higher-status Blacks perceived more injustice than did lower-status Blacks. The opposite was true for white respondents (see also Boggs and Galliher, 1975; Wortley et al. 1997). This finding may be a product of contact with the police. While high social status has been shown to insulate white people from police contact, this association does not hold for Black people (Wortley and Tanner, 2003). Therefore, higher-status Blacks who expect to be shielded from police contact due to their social status may become particularly disgruntled when they are subject to the same level of police surveillance as their lower-class counterparts.

Age: The relationship between age and perceptions of and experiences with the police is apparent from both historical and more contemporary research (Dunham and Alpert, 1988; Jones-Brown, 2000; Jones-Brown 2007; Hinds, 2009; Brunson and Weitzer, 2009; Gabbidon et al., 2011; but see Jacob, 1971; Davis, 1990). Most studies have found that younger people have

more adversarial contact with the police than older people, and are thus more likely to develop negative views about law enforcement professionals (Cao et al., 1996; Chandek, 1999; Cheurprakobkit, 2000; Weitzer, 2010; Davis, 1990). Weitzer, points out that while this age distinction exists across all racial groups, minority youths are especially vulnerable to unwanted police attention, and are thus more likely to hold negative views of the police than white youths (2010: 119). The negative views held by the young Black men in Brunson and Miller's (2006) research with inner-city youth, for example, were attributed to frequent involuntary contact and poor treatment during these contacts – typical of proactive policing strategies employed in poor minority communities (Brunson and Miller, 2006: 635-637).

Gender: Overall, previous research indicates that gender is not typically a predictor of attitudes or experiences with the police in its own right, but does interact with both race and age (Weitzer, 2010: 119). Research that has examined the race-age-gender triad have found that young Black males are significantly more likely to report having negative experiences with the police, and to report holding negative views about the police, than all other social groups (Weitzer, 2010: 119). Recently, Gabbidon et al. (2011) used a nationally representative sample to examine gender differences in perceptions of police treatment amongst African Americans. Their results indicate that while Black men are more likely to report recently experiencing unfair treatment by the police, there were minimal differences in the characteristics of Black men and women who reported such treatment. They suggest that Black women's negative experiences emerge from their poor treatment as victims rather than the perpetrators of crime. Furthermore, they found that Black women's views of the police are more similar to Black men's than to those of women in other racial groups (Gabbidon et al., 2011: 14). Therefore, observed gender

differences in perceptions of the police appear to be a product of gender differences in the nature of police contact.

Contact with the Police: As indicated above, personal contact appears to influence citizen perceptions of the police. This may be particularly true if contact is initiated by the police officer. As Wortley et al. (1997) note, "formal police stops and interrogations are the most sensitive of police/citizen encounters and ... hostility often results when police officers fail to give reasons for their actions" (648). Available evidence suggests that positive interactions with the police tend to encourage more positive perceptions, while negative encounters have the opposite effect (Smith et al., 1991; Worral, 1999). Furthermore, although findings are mixed (see Jacob 1971; Dean, 1980; Huang and Vaughn, 1996; Cheurprakobkit, 2000), Weitzer and Tuch (2006) suggest that negative or unpleasant experiences with the police tend to have a stronger effect on perceptions than do positive ones (Weitzer and Tuch, 2006: 19).

The concept of procedural justice, therefore, appears to be strongly related to the development of negative perceptions of the police. Procedural justice is concerned with process rather than outcome, and in this context refers to the treatment of a citizen by the police during an encounter. As Weitzer and Tuch explain, "process trumps the outcome" – the treatment of the citizen by the police may be more important than the end result of the interaction (2006: 17). Procedural justice was another theme that emerged in Brunson and Miller's interviews with young Black inner-city men. They write:

> While the young men objected to the overall treatment they received by the police, they especially disliked the way officers spoke to them. For example, they noted that police officers routinely used antagonistic language, engaging in name calling, cursing and derogatory remarks ... Thus, young mens' complaints about police harassment were not just about being stopped on a regular basis, but were also systematically tied to their sense that officers refused to treat them with dignity (2006: 628).

Negative treatment by the police may be particularly salient in the development of negative perceptions if such treatment is perceived as being racially motivated. Weitzer and Tuch (2002) conclude that personal experience with racial discrimination has adverse effects on an individual's perceptions of the police (252). Discrimination may not only be experienced during police initiated contact, but also when citizens seek assistance from the police, such as when they are victimized or witness a criminal act (Kusow et al. 1997; Smith and Hawkins, 1973; Thurman and Reisig, 1996).

In addition to the demographic variables presented above, the influence of contextual-level factors on citizen perceptions of the police has also been examined. Some of these factors are discussed below.

Contextual level variables

Ecological Context: Police-community relations are shaped by the conditions that characterize a given community. Research has revealed that police practices vary by geographical area, resulting in differential treatment of citizens in different neighbourhoods (Weitzer & Tuch, 2006: 21). As Brunson and Miller note, "many scholars suggest that the consistent finding of minority distrust and dissatisfaction with the police can best be understood with reference to the nature of policing in their communities" (2006: 614). In line with social disorganization and social conflict theories, a neighbourhood's socio-economic status appears to play a major role in how an area is policed. Research indicates that disadvantaged or higher crime neighbourhoods are more likely to receive punitive or enforcement-oriented policing (Anderson, 1990; Fagan and Davis, 2000). Inner-city neighbourhoods, for example (which tend to have high proportions of racialized populations) are often the site of multiple compound

problems, such as low education levels, high rates of poverty, unemployment, crime and single-parent households – all of which are claimed to be associated with community disorganization and strained police-community relations (Dunham & Alpert, 1988: 521; Weitzer & Tuch, 2006: 22).

Weitzer and Tuch (2006) provide two reasons why a neighbourhood's socio-economic disadvantage influences policing practices, and why police abuse and misconduct tend to be higher in these areas. First, police abuse may be linked to the opportunity structures of a community. Opportunities for police abuse are higher in disadvantaged communities because of the higher levels of street crime and disorder. The sheer number of officers deployed in these areas is higher, increasing police-citizen contacts and the potential for obtrusive and disputatious contacts. These communities also provide officers with more opportunities to engage in corrupt activities, such as illegal seizure of narcotics for the purpose of resale or personal consumption, or planting evidence on suspects (Weitzer & Tuch, 2006: 22). They also lack constraints on police abuse as the residents are relatively poor and powerless, and therefore less capable of holding the police accountable than are residents of more economically advantaged neighbourhoods.

The level of crime is another neighbourhood condition that appears to influence police-community relations. Again, poor neighbourhoods tend to have higher levels of crime than middle-class neighbourhoods, increasing the frequency of police-citizen contacts and the likelihood that the contact may sour (Weitzer & Tuch, 2006.). People who believe that their neighbourhood is afflicted by drug dealing or gangs and those who believe that crime is a serious problem in their neighbourhoods are also more likely to be critical of the police (Cao et al, 1996; Weitzer & Tuch, 2006: 21-24). It seems intuitive that if police practices differ across

neighbourhoods according to their economic status and racial or ethnic composition, there will be geographical and therefore racial differences in attitudes towards the police (Skogan, 1978; Jesilow et al, 1995; Weitzer, 1999).

Finally, in line with minority threat theories, a neighbourhood's racial composition may also influence residents' perceptions of and experience with police discrimination. Stewart et al. (2009) examined the effects of neighbourhood racial composition on perceived experiences with police discrimination amongst a sample of over 700 Black youths. The results indicate that Black youths felt they were most often discriminated against by the police in white neighbourhoods, particularly those that had seen a recent increase in the size of their Black population. Black youths were also more likely to feel that they were discriminated against in neighbourhoods with higher levels of affluence, and those with higher rates of violence (Stewart et al., 2009: 871). Apple and O'Brien (1983), on the other hand, suggest that neighbourhoods with higher concentrations of Black residents provide more opportunities for Blacks to associate with peers who have negative attitudes towards the police, thus increasing their negative perceptions (Apple and O'Brien, 1983). Here, neighbourhood composition influences the opportunity for vicarious experience with the police and may influence how residents are socialized to view the police. These factors are addressed below.

Socialization and Vicarious Experience: While a negative first-hand encounter with the police may result in negative perceptions, direct contact is not necessary for evaluating the police negatively (Weitzer & Tuch, 2006). Weitzer and Tuch (2006) illustrate how family members educate their children about the police by noting that some African American families go to great lengths to instruct their children on proper etiquette when dealing with the police (19). This instruction includes awareness of what to do in an encounter with the police, for example,

keeping hands in plain view, avoiding sudden movements or reaching into pockets, and being respectful and courteous towards officers in order to avoid abuse or, at worst, being shot (see also Brunson and Weitzer, 2011). This type of socialization starkly contrasts with much of the dominant white society where children are taught to view the police as a symbol of safety and protection. The lessons Black parents teach their children about the police may help them to avoid negative and potentially deadly encounters, but they also "cannot help but pass the attitudes, resentment and injuries on to the next generation" (Harris, 2002:113).

'Vicarious learning' is an effective form of socialization. Simply knowing about another person's experiences with the police or the justice system, especially if that person is a friend or family member, can lead to the internalization of negative attitudes. Vicarious experience of the police is often transmitted or generated through 'war stories' of negative police encounters that are shared between friends – for example, accounts of police harassment or beatings. Rosenbaum et al. (2005) examined the effect of direct and vicarious experience with the police over the previous year on citizens' attitudes towards the police. They found that while direct experience on its own was not sufficient to change attitudes, vicarious experience was (Rosenbaum et al., 2005). Warren (2011) examined the impact of vicarious experience on perceived disrespect from the police during traffic stops. This study, involving almost 3,000 Black and white drivers in North Carolina, found that vicarious experience, along with distrust of other social institutions, exerted the greatest impact on perceptions of disrespect by the police. While this effect was true for both white and Black respondents, Black respondents reported having heard twice as many negative stories about the police than did white respondents (Warren, 2011). Similarly, Hurst et al. (2000) found that hearing or seeing police misconduct had the strongest effect on perceptions

of policing amongst their sample of youth, again illustrating the effect of police treatment on the development of citizens' perceptions of the police.

Summary

The main finding emanating from previous research, particularly studies that include race-age-gender interaction, is that young Black males are significantly more likely to report bad experiences with the police and to hold negative perceptions of the institution than are other demographic groups (Weitzer, 2010). This finding appears to be influenced by the ecological contexts in which many Black people reside, and the nature of policing in these areas. The literature shows that while direct contact is not necessary for the formation of attitudes towards the police, first hand experiences do appear to have a strong influence on citizen perceptions of the institution. Finally, there appears to be a need to examine within-group heterogeneity in citizens' perceptions of and experiences with the police. As Weitzer (2010) points out, "one problem with the category 'Latino' or 'Hispanic' is that it masks internal differences between sub-groups along the lines of ancestry, and immigrant versus native-born status." (Weitzer, 2010: 11). I would argue that the same is true with regard to Black or African Canadians. Having reviewed mostly American literature on perceptions of the police and police bias, the next section looks at some Canadian findings.

The Canadian Context

Despite the abundance of American literature, relatively little Canadian research has examined racial differences in citizens' perceptions of and experiences with the police. To date, most Canadian studies have focused on racial differences in perceptions of police bias, and have confirmed the finding from U.S. research that Blacks perceive more police bias than do members

of other racial groups (Weitzer and Tuch, 2006; Wortley 1996; Wortley et al., 1997; Wortley & Owusu-Bempah, 2009). However, unlike work in the U.S. (Brunson, 2007; Gabbidon et al., 2011) and Great Britain (Sharp and Atherton, 2007), relatively little Canadian research has focused specifically on within-group differences in Blacks' perceptions of and experiences with the police (but see Henry, 1994; Wortley et al, 1997; James, 1998). Furthermore, with few exceptions (Satzewich and Shaffir, 2009; Ezeonu, 2010), Canadian research on the views and experiences of Black police officers is virtually non-existent. Therefore, we know relatively little about how negative perceptions of the police develop within the Black population, or about the consequences of these perceptions. We also know very little about how Black law enforcers view the policing of members of their own racial group.

One of the largest studies to examine perceptions of police discrimination in Canada involved a survey of a representative sample of over 1,200 Black, Chinese and white Torontonians, conducted as part of the *Commission on Systemic Racism in the Ontario Criminal Justice System* in the early 1990s. This study was replicated in 2007 to determine the extent to which citizens' perceptions of bias had changed over the intervening 14-year period. The results indicate that perceptions of police bias had increased amongst Toronto's Black, white, and Chinese residents. For example, in 1994, 76 % of Black Toronto respondents felt that the police treated Black people worse than white people. By 2007 this figure had increased to 81 %. Similarly, in 1994, 46 % of Chinese respondents felt that the police treated Chinese people worse than white people; by 2007 this figure had increased to 50 %. Interestingly, white respondents' perceptions of bias against both Black and Chinese Torontonians also increased over this time period. In 1994, 51 per cent of white respondents believed the police treated Black people worse than white people. By 2007 this figure had increased to 59 % (Wortley, 1996; Wortley &

Owusu-Bempah, 2009). Overall, the findings of Wortley and Owusu-Bempah's research indicate that perceptions of police bias against Black people are not concentrated amongst Toronto's Black population. Indeed, a substantial proportion of both white and Chinese Torontonians feel that the police treat Black people differently from the city's white residents.

Other Canadian studies have examined the perceptions of 'visible minorities' as a collective group, and of Chinese and Black Canadians separately. Using data from the 1999 and 2004 General Social Surveys, O'Conner (2008) and Cao (2011) examined visible minority attitudes towards the police. O'Conner (2008) found that visible minorities evaluated police performance more negatively than white Canadians, while Cao (2011) found that visible minorities had less confidence in the police than whites. Chu and Song (2008) examined attitudes towards the police among a non-random sample of 293 Chinese immigrants in Toronto. Overall, the findings indicate that Chinese immigrants have relatively favourable attitudes towards the police. However, respondents who reported having previous contact with the police, and those who did not speak English held less positive views.

In another study, Henry (1994) conducted participant observation and in-depth interviews to examine the general experiences of Caribbean immigrants in Toronto. Using a class-based analysis, she found that a central concern of the Caribbean community in Toronto was their relationship with the police. While members of different classes (e.g. working vs. middle class) voiced different types of concerns, the overwhelming perception of the police amongst her sample was negative and drawn largely from personal and vicarious experience. The perceptions of young people in Henry's study are particularly telling. Regardless of class, students overwhelmingly viewed the police as the "ultimate oppressor" (Henry, 1994: 202). Finally, Oriola and Adeyanju (2011) examined perceptions of Canadian laws and the justice system held

amongst a select group of Nigerian immigrants in Winnipeg. Based on interviews with 76 adults recruited from a Winnipeg church, Oriola and Adeyanju found that their perceptions were largely mixed, yet more positive than found within the existing literature. Oriola and Adeyanju noted that these positive findings may be explained by the fact that many people in their sample had arrived in Canada within the previous five years, and thus had little direct contact with the police (see also Wortley & Owusu-Bempah, 2009). Furthermore, the respondents indicated that they preferred not to involve the Canadian criminal justice system in their personal matters where possible, and that they perceived the system here to be preferable to that in Nigeria. Interestingly, Oriola and Adeyanju noted that their respondents were better able to articulate experiences of discrimination within the labour market than the justice system, possibly because of their participation in that sector of society[15] (Oriola and Adeyanju, 2011).

In line with the concept of the "symbolic assailant[16]," American research indicates that Black males (young Black males in particular) have the most negative experiences with the police, being the most likely recipients of police surveillance, harassment and abuse (Skolnick, 1966; Jones-Brown, 2007; Hurst et al., 2000; Brunson & Miller, 2006; Brunson & Weitzer, 2009). The relatively small body of Canadian literature examining this phenomenon indicates that the situation is remarkably similar in this country. A quantitative study of Toronto high

[15] A focus group involving Black immigrants to Winnipeg organized by the Winnipeg Police Advisory Board produced different results than those reported here. The 15 focus group participants who had historical roots in Ethiopia, Liberia, Somalia, Sudan, Nigeria and Ghana believed the police exhibited race-based actions and attitudes, directed towards both youth and adults. The participants believed the police treated newcomer communities with a general lack of respect and generalized the activities of a few to represent the whole community. Furthermore, the respondents spoke of the general harassment of Black youth during everyday activities in public spaces. The consequences related to this treatment were a growing lack of trust amongst newcomer communities and a diminished perception that the police in Canada were any different from the countries from which the respondents had come (Winnipeg Police Advisory Board, 2009).

[16] In his observations of police work in "Westville", Skolnick (1966) concludes:
"The policeman ... develops a perceptual shorthand to identify certain kinds of people as *symbolic assailants*, that is, as persons who use gesture, language, and attire that the policeman has come to recognize as a prelude to violence ... The patrolman in Westville, *and probably most communities*, has come to identify the black man with danger" (Skolnick, 1966: 45 and 49, emphasis added) cited in Jones-Brown, 2007).

school students conducted in 2001 asked respondents about their recent contact with the police. The findings indicated that Blacks are subjected to higher levels of police surveillance than are members of any other racial group. Racial differences in police stop-and-search practices remained after accounting for criminal activity, gang membership, drug and alcohol use, and public leisure activities (Wortley & Tanner, 2005). Similarly, Wortley and Owusu-Bempah (2011) examined the self-reported experiences with the police amongst a sample of Black, white and Chinese Torontonians[17]. They show that even after controlling for theoretically relevant variables (such as age, income and public activities), Black respondents were more likely than either white or Chinese respondents to report being stopped and searched by the police.

Qualitative research with youth in Toronto and other Canadian cities also provides insight into the role of the police in the continued social marginalization of Black youth. Neugebauer-Visano (1996) conducted informal interviews with a sample of 63 youths (37 Black and 26 white) recruited from community centres in the Toronto and York regions of Ontario, paying particular attention to the way in which race structured police-youth relationships. All youths interviewed believed that Black males alone suffered the greatest level of police harassment, and while white youth reported negative experiences, they felt that the police treated them as if they were corrigible. Importantly, Neugebauer-Visano found that the youth in her sample believed the police exploited race as a resource, utilizing racist stereotypes drawn from both the police occupational culture and popular culture to determine who is criminal and who is not (Neugebauer-Visano, 1996: 89). Black youth in particular felt that the police view their power as being based upon white supremacy, feeling that the police view non-white skin colour as an indicator of a troublesome identity which denotes a debased or spoiled status. They also believed

[17] This analysis is based on the same 2007 dataset used to examine citizens' perceptions of criminal injustice discussed above (Wortley and Owusu-Bempah, 2009).

the police liked to see them "squirm" when pressed or questioned – Black youths' unease and discomfort was thought to bring pleasure to some officers (Neugebauer-Visano, 1996: 91).

Using a similar methodology, James (1998) conducted interviews with 50 Black youths (30 males and 20 females) in six cities across Ontario. James highlights the importance of the streets as the context in which police-Black interactions occur. He notes that the streets are often the only free and available space for poor and working-class people, particularly those who live in apartment buildings (James, 1998: 162). James found that many of his participants reported being stopped and questioned by the police as a matter of routine, and consistently believed that skin colour was the main factor in attracting police attention (James, 1998: 166). Like the youth in Neugebauer-Visano's sample, James' respondents also blamed the negative stereotypes about Blacks held by police officers and influenced by the media as contributing to their treatment (James, 1998: 165). Several important points were raised by the youth in this study. First of all, although Black women were viewed by the police with the same level of suspicion as Black men, they were harassed less often and treated differently from Black males when they were stopped. Secondly, respondents felt that the police were better able to distinguish between white males, yet thought that all Black males look the same. Finally, consistent with other studies, middle-class young Black men were just as likely as those from the working class to be stopped, questioned, searched, and harassed by the police (James, 1998: 170). While the views and experiences of both adult and young Canadians are particularly telling, racialized police officers can also provide a distinct perspective on police-race relations. The literature documenting perspectives of Black police officers is presented below.

The Perceptions and Experiences of Black Police Officers

Examining the perceptions and experiences of Black officers is important, given the unique social position they occupy. The literature indicates that Black male police officers experience workplace discrimination at the hands of their colleagues. When out of uniform they assume the status of the "symbolic assailant," and are subject to increased levels of police scrutiny akin to other Black males (Alex, 1969; Barlow and Hickman-Barlow, 2002). Black policemen also have a firsthand view of the racism and discrimination perpetrated by the police against Blacks and other racial minorities. Because they are familiar with the intricacies, strategies, techniques, and dangers of law enforcement, Black police officers are thus better situated than the average citizen to distinguish between legitimate law enforcement practices and those based on racial discrimination (Barlow and Hickman-Barlow, 2002).

We know very little about the representation of racialized police officers in Canadian police services, and about the professional experiences of Black and other racial minority police in Canada (but see Holdaway, 1996; Chapman-Nahyo 2002; Smith, 2006). But we know even less about how racialized police view the policing of racial minority citizens and communities. Previous research on the experience of Black and racial minority officers, such as studies by Alex (1969) and Leinen (1984) in the United States, and Holdaway and Barron (1997) in Great Britain, has shown that racialized officers face a number of unique challenges and problems in their professional lives. Their findings also touch upon the officers' views about police treatment of members of their communities in the context of the officers' professional experiences. For example, Leinen (1984) discusses how white officers' treatment of the Black community is one of the most persistent sources of conflict between Black and white officers (129). Similarly, Holdaway and Barron (1997) note that while the stereotypical views held by police officers were

not restricted to racial minorities, stereotypical ways of thinking facilitated racial prejudice and possibly discrimination (128).

There are several notable exceptions to the dearth of research on officers' perceptions of the policing of minority communities. Ioimo et al. (2007), for example, conducted focus group interviews with over 200 police officers of different races to determine whether "bias-based policing" occurs in Virginia. Because "bias-based policing" [18] captures more than issues associated with racial discrimination, it cannot be assumed that their results are directly related to race. Nonetheless, the results of their study indicate that 21 % of respondents reported that they believe officers within their department practice bias-based policing, and 15 % reported that they had witnessed it themselves (Ioimo et al., 2007: 284). Although they do not specify a percentage, Ioimo et al. report that a considerable proportion of officers thought that bias-based policing was a *somewhat* serious or serious issue in their department, which suggests that officers believe bias-based policing to be an issue despite current training efforts. Furthermore, they found that minority officers were more likely to believe that bias-based policing is an issue, and to believe that it is both officially and unofficially supported by their police departments.

In the first of two Canadian studies, Satzewich and Shaffir (2009) drew on "informal conversations" with 18 officers (16 male, two female, nine visible minority and nine white) to gain a better understanding of police denials of racial profiling. Satzewich and Shaffir argued that the police subculture can be used to understand how officers both understand and deny the existence of racial profiling. The socialization that takes place within the police subculture, they proposed, heightens officers' sense of dangerousness and criminality (Satzewich and Shaffir,

[18] Ioimo et al define bias-based policing as "practices by individual officers, supervisors, managerial practices, and departmental programs, both intentional and non-intentional, that incorporate prejudicial judgments based on sex, race, ethnicity, gender, sexual orientation, economic status, religious beliefs, or age that are inappropriately applied." (2007:271)

2009: 208-9). The officers acknowledged the need to criminally profile, but rejected the assertion that racial profiling takes place; race, however, may be one element of a criminal profile (Satzewich and Shaffir, 2009: 209). Furthermore, Satzewich and Shaffir identified three ways that the police neutralize and deflect allegations of racial profiling. The first strategy – "the intolerance of intolerance" – involves pointing to recent changes in policing, such as initiatives that reflect a commitment to tolerance and diversity and an intolerance of discriminatory behaviour (Satzewich and Shaffir, 2009: 212). The second strategy involves an appeal to multiculturalism, and the argument that the police cannot engage in racial profiling because recruitment mechanisms have changed to increase racial diversity in the makeup of the police force. The final strategy is blaming the victim, or arguing that the problem lies not with the police, but with the individuals and organizations that claim racial profiling is a problem (Satzewich and Shaffir, 2009: 217). Other officers argued that people who make claims about racial profiling do not understand the complexity of police work and hold views that are formed from watching American television. While this work makes an important contribution, it is not without its critics. Henry and Tator (2011), for example, in a rejoinder to the article, argued that Satzewich and Shaffir failed to acknowledge how the police culture provides a fertile environment for racism.

Finally, Ezeonu (2010) utilized official police statements, annual reports and interviews with twelve police officers (four junior Black officers, five senior white officers, and five junior white officers) to examine how the Toronto Police Service has constructed the issue of gun violence within the city. Although Ezeonu's questions were not related directly to the policing of Black males, his findings may be of use in understanding how the police comprehend and therefore respond to crime within Black communities. Ezeonu found that the predominant frame

used in the police construction of gun violence attributed the problem to the proliferation of gangs, illegal gun smuggling, and illicit drug trafficking (2010). Structural problems that exist within Canadian society were the second frame advanced by the police in constructing gun violence. Structural problems include poverty, unemployment, and the social breakdown of both neighbourhoods and families – all of which link youth violence to economically marginalized communities (Ezeonu, 2012: 152-8).

Ezeonu concludes by stating that police discourse may influence the nature of policing in Toronto (Ezeonu, 2010: 161). He argues that the connections police draw between young Black males and gun violence in Toronto may lead to more aggressive policing of young Black men, and the (re)construction of a notion that they are violent and dangerous. Finally, Ezeonu notes that a major problem is the collateral damage caused by the police targeting of law-abiding citizens. This, he suggests, will have a further negative impact on relations between the police and members of the Black community.

Conclusion

This chapter has reviewed various theories used to explain Black males' perceptions of and experiences with the police. Based on the review, I contend that an over-arching framework – one that takes into account the historical development of race as a social category, and its influence on present day social relations – is necessary to better understand police relations with Black people. As such, critical race theory is employed to account for the some of the shortcomings of the previous theories. This review has also highlighted the importance of race in structuring citizens' perceptions of the police, and illustrated how a number of variables interact with race to influence these views. Although the findings with regard to the impact of class, age,

and gender (for example) are mixed, the extant literature suggests that these characteristics can influence the frequency and nature of police contact, which in turn informs perceptions of the police. As the work of Weitzer & Tuch (2006) and Brunson and Miller (2006) makes quite clear, Black youth who reside in inner cities in the U.S. are particularly susceptible to contact with the police, are subject to police harassment and abuse, and thus to the development of negative perceptions of the police. The views and experiences of this group are therefore influenced by their positions in society and the geographical locations in which they reside.

This area of research is less developed in Canada than in the U.S. However, available evidence indicates that like the U.S., racial differences in perceptions of the police exist – Black Canadians are the most likely to hold unfavorable views of the police (Wortley et al., 1997; Wortley and Owusu-Bempah, 2009). Available evidence also indicates that young Black men are viewed – and very much treated – as symbolic assailants, being subject to increased levels of police surveillance, harassment and abuse, resulting in their further criminalization (Neugebauer-Visano, 1996; James, 1998). Understanding why different racial groups hold different views of the police is important, but there is also a need to document the factors that account for variations in perceptions of bias and negative experiences with the police within racial groups (Stewart et al., 2009). In other words, there is a need to investigate intra-racial differences as well as inter-racial differences. Since Black males are the group most likely to experience negative police interactions and to hold negative views of the police and the criminal justice system, their perspectives may be particularly useful for the development of theory, and the formation of criminal justice policy related to police-community relations. This is particularly true for young Black males who have such disproportionately high levels of police contact and conflict. Unfortunately, we do not fully understand which individual-level and contextual variables

influence views of the police amongst Black Canadians. We also do not know how the views of Black adults and Black youth compare. Finally, we know very little about how Black police officers understand the policing of Black communities in Canada. I endeavor to address some of these gaps in our knowledge by documenting various perspectives on the policing of Black males in Toronto, Canada.

This research project is innovative in that it utilizes data from three groups of Black males in order to develop a well-rounded understanding of how Black men experience the police. In doing so, it utilizes and builds upon previous research that has examined racial differences in perceptions of the police (Hagan and Albonetti, 1982; Weitzer and Tuch, 2006; Wortley, 1996), research that has examined the perceptions and experiences of young Black men (Russell, 1998; Brunson and Miller, 2006; James, 1998), and research on the perceptions of racialized law enforcers (Ioimo et al., 2007; Satzewich and Shaffir, 2009; Ezeonu, 2010). This research will contribute to the criminological literature in four ways: 1) by documenting the perceptions of and experiences with the police of a random sample of adult Black males in Toronto; 2) by documenting the perceptions of and experiences with the police amongst a large sample of young Black men who have been, or are at risk of, conflict with the law in Toronto; 3) by incorporating Black officers' perspectives and experiences of the policing of Black males in Toronto; and 4) by comparing the perceptions of and experiences with the police of three distinct groups of Black males. The main contribution of this research will be bringing these perspectives together and comparing the results of the different groups. To do so, the thesis will address the following research questions:

Data Source One (representative sample of adult males):

1) Do Black males in Toronto hold different perceptions of police performance and police bias than Black females or members of other racial groups?
2) Do Black males have more frequent police contacts than Black females or members of other racial groups? Are these contacts of a different nature?
3) Do racial differences in the frequency and nature of police contact help explain racial differences in perceptions of the police?

Data Source Two (sample of young Black males who are at risk of or who have been in conflict with the law):

1) How do "at risk" young Black men in Toronto view the Toronto police in terms of their performance, levels of trust and confidence, and perceptions of bias and corruption?
2) What is the frequency and nature of the young Black men's contacts with the police?
3) Does the frequency and nature of the young Black men's contacts with the police influence their views of the police?

Data Source Three (Black male police officers):

1) Do Black male police officers perceive racial bias in policing within the Greater Toronto Area?
2) How do Black male police officers understand police treatment of Black citizens and Black communities in the Greater Toronto Area based on their own experiences as police officers?
3) What policy suggestions do Black male police officers put forth to improve relations between Black communities and the police?

To provide a broad perspective on the policing of Black males, a mixed methods approach is used to address the research questions presented above. A mixed methods approach incorporates multiple research techniques, approaches, and concepts (e.g. quantitative and qualitative) within the same study or set of related studies to introduce multiple perspectives, and to provide a more elaborate understanding of a phenomenon of interest (Johnson et al., 2007). Mixed methods approaches may be used in cases in which a quantitative or qualitative approach by itself is inadequate to develop multiple perspectives or a complete understanding of a research problem or question. While quantitative research is useful for gathering descriptive information, examining the relationship between variables, and providing testable and generalizable results, findings gathered through this approach may be devoid of context and meaning (Johnson and

Onwuegbuzie, 2004). On the other hand, qualitative research focuses on context and meaning, providing detailed information about a phenomenon; however, these findings may not be generalizable or replicable (Johnson and Onwuegbuzie, 2004).

In mixed methods studies, researchers purposefully combine quantitative and qualitative data to maximize the strengths and minimize the weaknesses of each type of data. To this end, the findings of the first study in this thesis were used to inform the choice of subjects and development of survey items for the second and third studies. The quantitative findings from the first study revealed that Black males, particularly young Black males, have the highest level of contact with the police and feel most negatively about their treatment at the hands of law enforcers. Thus, the second study involves a sample of young Black men. Furthermore, in addition to quantitative questions (carried over from the first study) that investigate the frequency and nature of the young men's contact with the police, qualitative questions in which the young men were able to elaborate on their encounters with the police were included in order to contextualize their experiences with law enforcement. Likewise, the study includes a sample of Black male police officers in order to provide a countervailing perspective to that of the adults and youth from the general population. The officers were asked the same structured questions about their views of the police and police bias for triangulation of the findings (to compare the views of Black male adults, youth, and law enforcers), as well as a set of questions derived from the findings of the first and second studies. As a result, this thesis has produced findings that are generalizable, provide multiple perspectives, and are attentive to the lived experience of Black males in Toronto. The use of multiple methods allows for the development of a more complete understanding of the policing of Black males. A detailed description of the methodologies used in each of the three studies is presented at the beginning of chapters three, four, and five.

CHAPTER 3

Race, Gender and Policing – Results from a Survey of Toronto Residents

Racially discriminatory policing has been a point of public concern in Toronto since at least the 1970s following several high profile police shootings of Black men (Wasun, 2008). The issue gained renewed attention at the turn of the millennium when the *Toronto Star* obtained official police data, and published a series of articles showing that Black people were over-represented in a variety of police outcome statistics. The *Toronto Star* series paid particular attention to areas where the police have a high level of discretion, such as "out-of-sight" traffic offences[19] (for example driving without a driver's licence) and simple drug possession charges. The analysis showed that Black people were highly over-represented in out-of-sight traffic offences and drug charges, and that they were more likely to be held in pre-trial detention. These racial differences remain even after controlling for other relevant factors (Rankin et al., 2002a; 2002b). The *Toronto Star* has subsequently produced several race and policing reports that have yielded similar results (Rankin 2010a; Rankin, 2010b; Rankin and Winsa, 2012). Although these newspaper articles have stirred up considerable public and academic debate about the police treatment of Black citizens, there is still relatively little academic literature that documents how Toronto residents themselves feel about the police and police bias. Thus we know relatively little about how racial differences in police contact influence citizens' perceptions of the police, and whether observed differences may also be influenced by gender.

Building on previous American and Canadian research that has documented racial differences in police contacts and attitudes towards the police (Hagan and Albonetti, 1982;

[19] These offences are typically discovered after a stop has been made and include: driving while under suspension, failing to carry a licence, failing to change address on a licence, and driving without insurance.

Weitzer and Tuch, 2006; Wortley, 1996; Wortley and Owusu-Bempah, 2009), this chapter presents an exploration of race and gender differences in Toronto residents' perceptions of police performance and police bias. The chapter reviews race and gender differences with respect to contact with the police, and examines how such contact influences attitudes towards the police. This chapter will also specifically focus on whether the perceptions and experiences of Black males differ significantly from Black females, and from both men and women of other racial groups. Race and gender differences are examined here to illustrate that, like other jurisdictions, it is Black men who are disproportionately targeted by police surveillance activities. Furthermore, I compare the views and experiences of Black men and women to show how the increased rates of police stops experienced by Black males also influence the perceptions of police bias held by Black females, fostering perceptions of police bias amongst members of both genders – a finding that does not hold true for either white or Chinese Torontonians.

After reviewing the study methodology, the chapter presents the results of an analysis of racial and gender differences in respondents' evaluations of police performance, and perceptions of police bias. The chapter then examines the results of analysis of racial and gender differences in experiences with the police. Here, data on police stops are presented, along with self-reported perceptions of police treatment during police encounters. Both personal and vicarious experiences with racial profiling are explored. Next, a series of multivariate models are presented to investigate whether racial differences in police contact can be explained by other theoretically relevant factors. The chapter then comes full circle and examines whether race and gender differences in police experiences can account for race and gender differences in perceptions of the police.

METHODOLOGY

This chapter presents data from the *2007 Perceptions and Experiences with the Justice System Survey (PEJSS).* This survey was conducted by the Hitachi Research Centre at the University of Toronto, Mississauga on behalf of Professor Scot Wortley from the Centre of Criminology and Socio-legal Studies, University of Toronto. As discussed earlier, the *PEJS* is a replication of a survey conducted in 1994 by York University's Institute for Social Research for the Commission on Systemic Racism in the Ontario Criminal Justice System (see Wortley, 1996; Wortley et al., 1997). Both the 1994 and the 2007 surveys employed the exact same sampling procedures. However, the 2007 survey includes a larger sample (N=1522) than the 1994 survey (N=1257). Furthermore, many of the questions asked in the 2007 survey are the same as those posed in the 1994 survey. The *2007 PEJSS* was supported by a grant from the Social Science and Humanities Research Council of Canada.

The purpose of the study was to examine citizen perceptions of crime and criminal justice in Toronto – Canada's largest city. The survey consists of a number of questions designed to measure: 1) perceptions of crime and fear of crime; 2) the perceived effectiveness of the police and criminal courts; 3) the frequency and nature of citizen contacts with the police, criminal courts and customs officials; 4) perceptions of police and judicial bias; 5) opinions about citizen complaints bodies; and 6) opinions about how to deal with possible discrimination within policing. However, the focus of the present analysis is on respondents' 1) opinions about the performance of the Toronto Police Service; 2) perceptions of police bias or discrimination; and 3) frequency and nature of contact with the police. A copy of the items from the questionnaire are found in Appendix A. Specific survey items used in all analyses are discussed in the appropriate sections below.

A two-stage probability selection technique was utilized to select respondents and to produce a representative sample of Black, Chinese, and white adults[20] (18 years of age or older) living in Metropolitan Toronto. The first stage of the sampling procedure involved the random selection of residential telephone numbers. This was achieved through the use of a Random Digit Dialling (RDD) procedure that gave all households – listed and unlisted – an equal and known probability of being selected (Tremblay 1982). The second stage of the sampling procedure involved selecting the adult member of the household – 18 years of age or older – with the next birthday. The birthday selection technique is commonly used by survey researchers because it gives each adult within the household an equal probability of being selected. Finally, a screening question was asked to identify the respondent's racial background. Only those respondents who self-identified as Black, Chinese, or white were asked to complete the entire interview process. Respondents who did not self-identify as one of the three target groups were thanked for their cooperation and excluded from the study[21].

Telephone interviews were conducted between October 2006 and January 2007. A response rate of 71% was achieved. The interviews were conducted in either English or Chinese (Mandarin or Cantonese dialects), and took an average of 35 minutes to complete. The final sample consisted of 1,522 respondents who identified themselves as Black (N=513), Chinese (N=504), or white (N=505). Table 1 provides a basic description of the final sample. As shown in Table 1, Black respondents are younger than the Chinese and white respondents. Indeed,

[20] I acknowledge that people of Chinese ancestry do not constitute a racial group according to the definition of race provided above. On the contrary, Chinese people would be classified as "Asian" within the Canadian context. Black, white and Chinese Torontonians were chosen for the 1994 study because they were deemed by researchers at the Commission on Systemic Racism in the Ontario Criminal Justice System to constitute the three largest "racial" groups in Metropolitan Toronto at the time. As such, the Commission's researchers deemed Chinese people to constitute a "racial group." As we wanted to replicate the 1994 study as best as possible, only Black, white and Chinese respondents were included in the 2007 survey. However, the Canadian census indicates that in 2006, the three largest population groups in Toronto were whites, South Asians, and Chinese residents (Chui, Tran, and Maheux, 2008).

[21] For more information about the survey see Wortley and Owusu-Bempah (2009).

14.4% of Black respondents were between 18 and 24 years of age, compared to only 10% of Chinese and 4.6% of white respondents. With regard to education, Chinese respondents were, in general, more educated than Black and white respondents. Two of every five Chinese respondents (42.3%) had completed a bachelor, graduate or professional degree, compared with 36.7% of white and only 21.5% of Black respondents. Consistent with their lower levels of education, Black respondents also reported lower household incomes than either Chinese or white respondents. Indeed, 43.1% of the Black respondents in our sample had a personal income of $39,000 or less, compared with 35.5% of Chinese respondents and just 20.6% of white respondents. Furthermore, Black respondents were the least likely to report having a household income of $70,000 or more. Finally, white respondents were the most likely to have been born in Canada. Almost three-quarters (73.1%) of white respondents were born in Canada, compared with 19.4% of Black and only 9.3% of Chinese respondents.[22]

[22] For previous uses of this data set see (Wortley and Owusu-Bempah, 2009; Wortley and Owusu-Bempah, 2011).

Table 3.1: Characteristics of Survey Respondents by Race

Demographic Characteristics	Black %	Chinese %	White %	Chi Square Analysis
Sex:				
Male:	35.1	44.8	41.2	X^2 =10.274; df=2; p=.006
Female:	64.9	55.2	58.8	
Age:				
18-24 years	14.4	10.1	4.6	
25-34 years	28.4	20.9	17.7	
35-44 years	21.6	27.6	17.9	X^2 =97.518; df=10; p=.000
45-54 years	15.0	22.7	24.4	
55-64 years	11.0	8.0	17.1	
65 years or older	9.6	10.7	18.5	
Employment status:				
Employed full-time	49.1	50.9	53.1	
Employed part-time	11.9	7.4	9.7	
Unemployed	10.8	3.8	4.2	X^2 =126,746; df=12; p=.000
Student	12.3	12.0	5.2	
Retired	10.0	12.0	21.5	
Homemaker	2.7	13.2	4.8	
Other	3.1	0.8	1.6	
Education:				
Elementary or less	4.4	10.1	0.4	
Some high school	9.1	9.5	6.3	
Completed high school	26.8	14.9	18.8	X^2 =166.564; df=12; p=.000
Some post-secondary	11.7	12.3	12.9	
Completed college	26.4	11.1	14.9	
Bachelor's degree	15.9	28.6	16.9	
Prof / graduate degree	5.6	13.7	19.8	
Household income:				
Less than $39 000	43.1	35.3	20.6	
$40 000 - $69 999	24.0	25.2	22.0	X^2 =128.186; df=6; p=.000
$70 000 or more	15.6	20.4	43.2	
Not reported	17.3	19.0	14.3	
Place of birth:				
Canada	19.4	9.3	73.1	X^2 =517.105; df=2; p=.000
Other	80.6	90.7	24.9	
Marijuana use:				
Yes	9.1	1.2	13.5	X^2 =53.080; df=2; p=.000
No	90.9	98.8	86.5	
Criminal record:				
Yes	4.1	0.4	3.4	X^2 =15.194; df=2; p=.001
No	95.9	99.6	96.6	
Marital status:				
Married / common law	37.7	68.9	55.1	
Widowed	2.0	1.6	9.3	X^2 =165.691; df=6; p=.000
Divorced	18.8	4.6	11.9	
Single	41.5	24.9	23.7	
Contact with police in past two years:				
None	66.1	78.8	79.9	
Once	12.9	13.9	15.6	X^2 =60.222; df=6; p=.000
Twice	6.8	4.2	7.5	
Three or more	14.2	3.2	5.0	
Sample size:	**513**	**504**	**505**	

PERCEPTIONS OF POLICE PERFORMANCE

In this section, I examine racial differences in citizen perceptions of police performance. All respondents were asked to evaluate whether, in their view, the police are doing a good job: 1) enforcing the law; 2) being approachable and easy to talk to; 3) supplying information to the public on ways to reduce crime; and 4) making their neighbourhood a safe place (see questions B1 to B4 in Appendix A). The primary purpose of the analyses presented below is to examine racial differences in opinions about police performance, and to examine whether these differences varied by gender.

As indicated in Table 3.2, the findings suggest that white respondents tended to hold more favourable views of the police than Black and Chinese respondents. For example, 53% of white respondents believed that the police were doing a "good job" of enforcing the law, compared to 39% of Black and 28% of Chinese respondents. Similarly, 58% of white respondents believed that the police were doing a "good job" of being approachable and easy to talk to. By contrast, only 37% of Black respondents and 30% of Chinese respondents felt the same way. Overall, respondents rated the performance of the Toronto Police Service least favourably with regard to supplying information to the public on ways to reduce crime. Nonetheless, white respondents (38%) were still more likely to think the police were doing a good job in this capacity than their Black (31%) and Chinese counterparts (22%). Finally, just over half of white respondents (51%) felt that the police were doing a "good job" of keeping their neighbourhood safe, compared to only 40% of Black and 30% of Chinese respondents.

Table 3.2 Percent of Respondents Who Feel that the Police Are Doing A "Good Job" Of Performing Various Duties, By Race

POLICE DUTY	BLACK	CHINESE	WHITE	Chi-Square Significance Level
Enforcing the law.	38.8%	28.0%	52.9%	X^2=152.360; df=6; p=.000
Being approachable and easy to talk to.	36.8%	29.6%	57.6%	X^2=133.786; df=6; p=.000
Supplying information to the public on ways to reduce crime.	30.8%	21.8%	38.2%	X^2=99.086; df=6; p=.000
Making my neighbourhood a safe place.	40.2%	30.2%	51.1%	X^2=103.512; df=6; p=.000
Sample Size	**513**	**504**	**505**	

Police Evaluation Index

In order to better summarize the results present in the cross-tabulations, a summary measure of police performance was created. The Police Evaluation Index (alpha=.75) combines responses to the four police evaluation questions discussed above. In review, all respondents were asked whether they felt that the police were doing a good, average, or poor job: 1) enforcing the laws; 2) being approachable; 3) supplying information to the public; and 4) keeping their neighbourhood safe. If respondents gave the police a rating of "poor" they were given a score of 0; if they indicated that they "don't know" how they police were doing they were given a score of 1; if they felt the police were doing an "average" job they were given a score of 2; and if they rated police performance as "good" they were given a score of 3. Responses to these four measures were then combined to create a single index of police performance ranging from 0 to 12 (mean score=7.78). The higher the score on this index, the higher respondents evaluated the police.

Consistent with the results of the cross-tabulations for the separate items presented above, a one-way analysis of variance shows that white respondents evaluated the police more positively than either Black or Chinese respondents. The mean score on the Police Evaluation

Index for white respondents is 8.92, followed by 7.34 for Black respondents and 7.05 for Chinese respondents. These racial differences are statistically significant (F=53.137; df=2; p=.000). A Bonferroni post-hoc test indicates that both Black and Chinese respondents score lower on the Police Evaluation Index than whites. The difference between Black and Chinese respondents is not statistically significant.

Table 3.3: Mean Scores on the Police Evaluation Index, by Race

Evaluation Index	**BLACK**	**CHINESE**	**WHITE**
Score	7.341	7.054	8.917
Sample Size	**513**	**504**	**505**
Total:	F=53.137; df=2; p=.000		

Further analysis (see Table 3.4) suggests that racial differences in perceptions of police performance exist for both male and female respondents. In general, regardless of gender, white respondents evaluated the police more positively than Chinese or Black respondents. Bonferroni tests further confirm that, for men and women, the difference between black respondents and Chinese respondents is not statistically significant.

Table 3.4: Mean Scores on the Police Evaluation Index, by Gender and Race

Evaluation Index	**FEMALE**			**MALE**		
Race	**Black**	**Chinese**	**White**	**Black**	**Chinese**	**White**
Score	7.417	6.917	8.980	7.200	7.221	8.827
Sample Size	**908**			**614**		
$\mathbf{X^2}$	F=36.966; df=2; p=.000			F=17.631; df=2; ; p=.000		

The last step in examining police performance involves an analysis of the Police Evaluation Index to determine whether there are within-race gender differences in evaluations of police performance. To do this I selected out each racial group individually and ran the ANOVA by

gender. The scores presented in Table 3.5 are the same as in Table 3.4 (above), however, this analysis shows that none of the within-race gender differences are statistically significant.

Table 3.5: Mean Scores on the Police Evaluation Index, by Race and Gender

Evaluation Index	Black		Chinese		White	
Gender	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**
Score	7.417	7.200	6.917	7.221	8.980	8.827
Sample Size	**513**		**504**		**505**	
X^2	F=0.423; df=1; p=.516		F=1.523; df=1; p=.218		F=0.355; df=1; p=.552	

In sum, these findings show that, regardless of gender, white respondents tended to evaluate the performance of the Toronto Police Service more favourably than Chinese or Black respondents, and that Chinese and Black respondents' perceptions of the police were not significantly different. The findings also suggest that, within racial groups, gender does not impact evaluations of police performance. Black males, for example, did not evaluate the police more negatively than Black females. In addition to citizen views about the performance of the police, I was also interested in whether respondents felt that police treat members of certain groups differently. In the next section, I turn to an analysis of racial differences in perceptions of criminal injustice.

PERCEPTIONS OF POLICE BIAS

In this section, I present an analysis of citizen perceptions of police bias. All respondents were asked whether they think the police treat 1) poor people the same as wealthy people; 2) young people the same as old people; 3) men the same as women; 4) English speaking people the same as non-English speaking people; 5) Black people the same as white people; and 6) Chinese people the same as white people (see questions C1, C4, C7. C10, C13, and C16 in Appendix A).

Consistent with the findings related to perceptions of police performance, the following analyses reveal significant racial differences in perceptions of police discrimination.

As illustrated in Table 3.6, Black respondents were more likely to perceive police bias than either white or Chinese respondents. Overall, Black respondents were more likely to perceive bias with regards to wealth, age, gender, and the treatment of Black people by the police than were respondents from other racial groups. For example, 71.7% of Black people believed the police treated poor people worse than wealthy people, compared to 59.5% of white and 38.5% of Chinese respondents. Importantly, a substantial proportion of respondents from all racial groups perceived police bias against Black people. Indeed, 73.7% of Black respondents, 55.8% of white respondents, and 48.4% of Chinese respondents felt that the police treated Black people worse than white people. The findings also indicate that white respondents perceived bias primarily with regard to wealth and age. Indeed, higher proportions of white respondents perceived wealth and age bias than they did other forms of bias (i.e., gender, race, and language bias). Chinese respondents, on the other hand, were more likely to perceive bias with regard to race and language than bias on the basis of wealth, age or gender.

Table 3.6 Percent of Respondents Who Perceive Police Bias, By Race

POLICE ACTIVITY	BLACK	CHINESE	WHITE	Chi-Square Sig. Level
Police treat poor people worse than wealthy people	71.7%	38.5%	59.8%	X^2=204.763; df=10; p=.000
Police treat young people worse than old people	69.0%	42.5%	62.5%	X^2=167.422; df=10; p=.000
Police treat men worse than women	58.1%	31.0%	32.1%	X^2=186.550; df=10; p=.000
Police treat people who **do not** speak English worse than people who **do** speak English	42.9%	58.1%	43.4%	X^2=50.805; df=10; p=.000
Police treat Black people worse than white people	73.7%	48.4%	55.8%	X^2=180.278; df=10; p=.000
Police treat Chinese people worse than white people	38.9%	49.1%	22.0%	X^2=112.657; df=10; p=.000
Sample Size	**513**	**504**	**505**	

In order to better summarize the results presented in the cross-tabulations above, a summary measure of police bias was created. The Police Bias Index (alpha=0.80) combines responses to the six questions about police bias. Again, respondents were asked how the police treated 1) poor people vs. wealthy people; 2) young people vs. older people; 3) women vs. men; 4) people who speak English vs. people who do not speak English; 5) Black people vs. white people; and 6) Chinese people vs. white people. If respondents reported that they felt a particular group was treated the same they were given a score of 0; if they reported that they "don't know" they were given a score of 1; if they felt that they were treated "better" or "worse", they were given a score of 2; and if they felt they were treated "much better" or "much worse", they were given a score of 3[23]. Finally, a third set of questions tapped the perceived frequency with which such bias occurs. Responses to this item were coded from '1' if they "did not know" to '4', if they felt that discrimination occurs often. The variables measuring degree and frequency of

[23] Positive and negative biases have been collapsed here to develop a scale of overall bias. In most cases, perceived bias goes only in one direction. These analyses were conducted with positive and negative biases separated, which produced very similar findings. Finally, the items do "scale" this way.

differential treatment were then multiplied and combined in order to create a single index of police bias ranging from 0 to 87. The higher the score on the Police Bias Index, the greater the level of perceived police bias (mean score=29.11).

Consistent with the results of the cross-tabulations presented above, a one-way analysis of variance suggests that Black respondents perceived more police bias than either white or Chinese respondents (Table 3.7). The mean score on the Police Bias Index for Black respondents is 37.90, followed by 25.12 for white respondents and 24.15 for Chinese respondents. These racial differences are statistically significant (F=71.394; df=2; p=.000). A Bonferroni post-hoc test indicates that both white and Chinese respondents scored lower on the Police Bias Index than Black respondents. However, the difference between white and Chinese respondents is not statistically significant.

Table 3.7: Mean Scores on the Police Bias Index, by Race

Bias Index	**BLACK**	**CHINESE**	**WHITE**
Score	37.900	24.153	25.121
Sample Size	**513**	**504**	**505**
X^2 F=71.394; df=2; p=.000			

An analysis of the Police Bias Index was also performed to examine racial differences within each gender. This analysis, presented in Table 3.8, indicates that Black males perceived more bias than either white or Chinese males. Similarly, Black females perceived more bias than either Chinese or white females. Bonferroni tests indicate that, for both genders, the difference between white and Chinese respondents does not reach statistical significance at the $p > .05$ level.

Table 3.8: Mean Scores on the Police Bias Index, by Gender and Race

Bias Index	FEMALE			MALE		
Race	**Black**	**Chinese**	**White**	**Black**	**Chinese**	**White**
Score	37.517	22.658	25.051	38.611	25.991	25.222
Sample Size	**908**			**614**		
X^2	F=46.213; df=2; p=.000			F=26.714; df=2; p=.000		

The final step in examining these measures of police bias involved an analysis of the Police Bias Index to determine whether there were within-race gender differences in the perception of police bias. To do this, I selected out each racial group individually and ran the ANOVA by gender. The scores presented in Table 3.9 are the same as in Table 3.8 (above). However, this analysis shows that only the within-race gender difference for Chinese respondents approached statistical significance. Overall, Chinese males perceived more police bias than Chinese females. None of the other within-group gender differences were significant. In other words, black women perceived just as much police bias as black males, and white females perceived just as much police bias as white males.

Table 3.9: Mean Scores on the Police Bias Index, by Race and Gender

Bias Index	Black		Chinese		White	
Gender	**Female**	**Male**	**Female**	**Male**	**Female**	**Male**
Score	37.517	38.611	22.658	25.991	25.051	25.222
Sample Size	**513**		**504**		**505**	
X^2	F=0.278; df=1; p=.598		F=3.793; df=1; p=.052		F=0.009; df=1; p=.924	

In sum, the findings presented in this section indicate that Black respondents perceived more police bias than either white or Chinese respondents. The results presented in Table 3.6 indicate that Black respondents were particularly aware about police bias against Black people.

In order to further test the reliability or stability of these beliefs, in the section below I explore three additional questions that measure perceived police discrimination.

ADDITIONAL MEASURES OF PERCEIVED POLICE BIAS

Racial Profiling

Given the ongoing concern surrounding the practice of racial profiling in Canada and the United States (Wortley and Tanner, 2005; Weitzer and Tuch 2006), the survey included a series of questions that examined public perceptions of and experiences with racial profiling. To begin, respondents were asked: "In your opinion, is racial profiling a problem in Canada?" The results indicate that Black respondents were much more likely to believe that racial profiling is a problem in Canada than respondents from other racial groups (see Table 3.10). Indeed, eight out of ten black respondents (80%) felt that racial profiling is a problem, compared to only 61% of white and 50% of Chinese respondents.

Table 3.10: Percent of Respondents Who Believe that Racial Profiling is a Problem in Canada, by Race.

Profiling a Problem	BLACK	CHINESE	WHITE
No	19.5%	50.2%	39.0%
Yes	80.5%	49.8%	61.0%
Sample Size	**513**	**504**	**505**
X^2=106.564; df=2; p=.000			

An analysis of gender differences within each racial category shows that women were slightly more likely to report that profiling is a problem than men. However, as indicated in Table 3.11, these gender differences do not reach statistical significance.

Table 3.11: Percent of Respondents who Believe that Racial Profiling is a Problem in Canada, by Race and Gender.

Profiling a Problem	BLACK		CHINESE		WHITE	
	Female	**Male**	**Female**	**Male**	**Female**	**Male**
No	17.1%	23.9%	48.6%	52.2%	35.7%	43.8%
Yes	82.9%	76.1%	51.4%	47.8%	64.3%	56.3%
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**
	X^2=3.414; df=1; p=.065		X^2=.665; df=1; p=.415		X^2=3.340; df=1; p=.068	

In addition to perceptions of racial profiling, respondents were also asked about racial differences in police use of force – specifically unjust police shootings, which are a further area of concern for Black citizens (see Fyfe, 1982; Wasun, 2008).

Unjust Police Shootings

Respondents were asked, "In your opinion, are black people more likely to be unfairly or wrongly shot by the police than white people?" As shown in Table 3.12, over three-quarters of Black respondents believed that a Black person is more likely to be unfairly shot by the police than a white person. However, the data also indicate that a substantial proportion of white and Chinese citizens feel the same way. Indeed, just under half of both white (46.7%) and Chinese (44.4%) respondents also believed that a Black person is more likely to be unfairly or wrongly shot by the police than a white person. Clearly, the perception that the police are more likely to unfairly shoot a black person than a white person is not isolated within the Black community.

Table 3.12: Percent of Respondents who Believe a Black Person is More Likely to be Unfairly or Wrongly Shot by the Police than a White Person, by Race.

Black Shot	BLACK	CHINESE	WHITE
No	22.4%	55.6%	53.3%
Yes	77.6%	44.4%	46.7%
Sample Size	**513**	**504**	**505**
Total:	X^2=142.078; df=2; p=.000		

Table 3.13 presents gender differences in perceptions of unjust police shootings involving Black people amongst members of each racial group. As with the question on police racial profiling, there are only slight gender differences within each racial group. Furthermore, none of these gender differences are statistically significant.

Table 3.13: Percent of Respondents who Believe a Black Person is More Likely to be Unfairly or Wrongly Shot by the Police than a White Person, by Gender and Race.

Black Shot	BLACK		CHINESE		WHITE	
	Female	Male	Female	Male	Female	Male
No	23.1%	21.1%	55.4%	55.8%	51.5%	55.8%
Yes	76.9%	78.9%	44.6%	44.2%	48.5%	44.2%
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**
	X^2=.272; df=1; p=.602		X^2=.006; df=1; p=.936		X^2=.889; df=1; p=.346	

Next, respondents were asked about unjust police shootings involving Chinese people. Specifically, respondents were asked "In your opinion, are Chinese people more likely to be unfairly or wrongly shot by the police than white people?" The results of this question are presented in Table 3.14 below. Almost one-third of Blacks (30.6%) believed that the police are more likely to unfairly or wrongly shoot a Chinese person than a white person, compared to 18.7% of Chinese and 13.5% of white respondents. Comparing the results of Tables 3.13 and 3.14 shows that higher proportions of respondents in all racial groups believed Black people are more likely to be unfairly shot than Chinese people.

Table 3.14: Percent of Respondents who Believe a Chinese Person is More Likely to be Unfairly or Wrongly Shot by the Police than a White Person, by Race.

Chinese Shot	BLACK	CHINESE	WHITE
No	69.4%	81.3%	86.5%
Yes	30.6%	18.7%	13.5%
Sample Size	**513**	**504**	**505**
Total:	X^2=47.547; df=2; p=.000		

Furthermore, within-race gender differences emerged with respect to perceptions of unjust police shootings of Chinese citizens. Indeed, as indicated in Table 3.15, white females were more likely than white males to perceive bias against Chinese people in unjust police shootings. Conversely, Black males were more likely than Black females to believe a Chinese person is more likely to be unfairly or wrongly shot by the police than a white person. The within-race gender differences are significant for both white (X^2=10.116; df=1; p=.001) and Black (X^2=4.799; df=1; p=.028) respondents.

Table 3.15: Percent of Respondents who Believe a Chinese Person is More Likely to be Unfairly or Wrongly Shot by the Police than a White Person, by Gender and Race.

Chinese Shot	BLACK		CHINESE		WHITE	
	Female	**Male**	**Female**	**Male**	**Female**	**Male**
No	72.7%	63.3%	79.9%	83.2%	82.5%	92.3%
Yes	27.3%	36.7%	20.1%	16.8%	17.5%	7.7%
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**
	X^2=4.799; df=1; p=.028		X^2=.911; df=1; p=.340		X^2=10.116; df=1; p=.001	

Overall, the findings related to perceptions of racial profiling and unjust police shootings presented in Tables 3.10 thru 3.15 are consistent with the results of the Police Bias Index. These measures confirm that Black respondents were more likely than members of other racial groups to perceive bias in policing practices. Thus far, this chapter has focused specifically on racial differences in attitudes or perceptions towards the police. The findings suggest that Black

respondents had lower evaluations of police performance than white respondents, and higher perceptions of police bias than both white and Chinese respondents. In the following section, I explore whether these racial differences might be explained by racial differences in personal and vicarious contact with the police.

CONTACT WITH THE POLICE

Police Stops

In this section, I first look at racial differences in contact with the police. Respondents were asked about their experiences with both traffic and pedestrian stops. First, all respondents were asked the question: "Not including R.I.D.E programs[24] and Christmas spot checks, in the past two years have you been stopped by the police when you were driving in a motor vehicle (as either a passenger or a driver)?" Those respondents who indicated that they had been stopped were asked a follow-up question: "In the past two years, how many times have you been stopped by the police while driving in a motor vehicle like a car, truck or motorcycle?" Respondents were then asked about their experience with pedestrian stops, specifically: "In the last two years, have you ever been stopped by the police when you were walking on the street, in a shopping mall, in a park or in some other public place?" Again, those respondents who indicated that they had experienced a pedestrian stop were asked about the frequency with which they had experienced this type of police contact: "In the past two years, how many times have you been stopped by the police when you were walking in a public place?" Responses to the questions about traffic and pedestrian stops were combined into a single measure capturing the total number of times they were stopped by the police in the past two years.

[24] R.I.D.E. stands for Reduce Impaired Driving Everywhere. During RIDE programs and Christmas spot checks, the police setup roadblocks and stop each vehicle passing through the checkpoint. The police do not exercise their discretion in whom to stop in these instances so they were therefore excluded.

As indicated in Table 3.16, Chinese respondents were least likely to report that they were stopped by the police in the past two years. By contrast, Black respondents were most likely to have been stopped by the police while driving in a motor vehicle or walking in a public place. Furthermore, Black respondents were significantly more likely than whites and Chinese to report that they had been stopped by the police on multiple occasions. Indeed, Black respondents were more than two times as likely as white respondents, and over three times as likely as Chinese respondents, to say they had been stopped three or more times by the police in the previous two years. These racial differences are statistically significant (X^2= 60.222; df=6; p=.000).

Table 3.16: Number of Times Stopped by the Police in the Past Two Years, by Race

NUMBER OF STOPS	BLACK	CHINESE	WHITE
None	66.1%	78.8%	71.9%
One	12.9%	13.9%	15.6%
Two	6.8%	4.2%	7.5%
Three or more	14.2%	3.2%	5.0%
Sample Size	**513**	**504**	**505**
X^2= 60.222; df=6; p=.000			

As Black men are overrepresented in police stops in various jurisdictions (see White and Rice, 2010; Bowling and Phillips, 2002), I also examined gender differences with respect to police stops in Toronto. The data indicate that within each racial group, males were more likely to be stopped by the police than females (Table 3.17). When we look at the rates of stops for Black respondents, we see that half of the Black males in the sample had been stopped at least once in the past two years compared with one-quarter of Black females. Similarly, one-quarter of Black male respondents reported having been stopped by the police on three or more occasions in the previous two years, compared with 9.3% of Black females. The data thus show that a large

proportion of the Black male sample – and the Black sample overall – had been stopped and questioned by the police in the past two years.[25]

Table 3.17: Percent of Respondents who Reported Being Stopped by the Police on Multiple Occasions in the Past Two Years, by Race and Gender

NUMBER OF STOPS	BLACK		CHINESE		WHITE	
	Female	Male	Female	Male	Female	Male
None	73.3%	52.8%	85.3%	70.8%	76.8%	64.9%
One	11.7%	15.0%	11.9%	16.4%	14.1%	17.8%
Two	5.7%	8.9%	2.2%	6.6%	6.4%	9.1%
Three or more	9.3%	23.3%	0.7%	6.2%	2.7%	8.2%
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**
	=26.293; df=3; p=.000		X^2=22.899; df=3; p=.000		X^2=12.073; df=3; p=.007	

Based on the results of previous research indicating that Black citizens are more likely to repost being searched by the police than others, (e.g. Rosenfeld et al., 2012) I was also interested to see whether there were racial differences in police searches amongst this sample.

Police Searches

Those respondents who indicated that they had been stopped by the police in the previous two years were asked whether they were searched during their most recent police stop. As with the police stop data, the results in Table 3.18 show marked racial differences in experiencing police searches. As indicated in Table 3.18, Black respondents were more likely than members of the other two racial groups to report having been searched by the police. An equal percentage of both white and Chinese respondents (1.6%) reported that they were searched by the police when they were last stopped. In comparison, 6.4% of Black respondents reported that they were

[25] I also examined within gender-racial differences in experiencing multiple police stops. These results are not reported for the sake of brevity. The results indicate, however, that significant racial differences in experiencing multiple police stops existed for both men (X^2=35.086; df=6; P=.000) and women (X^2=37.900; df=6; P=.000).

searched by the police. Thus, Black respondents were approximately four times more likely to have been searched by the police in the past two years than either white or Chinese respondents.

Table 3.18: Percent of Respondents who Reported Being Searched by the Police, by Race

SEARCHED BY POLICE	BLACK	CHINESE	WHITE
No	93.6%	98.4%	98.4%
Yes	6.4%	1.6%	1.6%
Sample Size	**513**	**504**	**505**
X^2=25.643; df=2; p=.000			

When gender differences are examined (Table 3.19), we can see statistically significant differences for both Black and white respondents. Indeed, Black males were over three and a half times more likely than Black females to report having been searched by the police. White males were also four times more likely to be searched by the police than white females.[26]

Table 3.19: Percent of Respondents who Reported Being Searched, by Race, by Gender

SHEARCHED BY POLICE	BLACK		CHINESE		WHITE	
	Female	**Male**	**Female**	**Male**	**Female**	**Male**
No	96.7%	87.8%	99.3%	97.3%	99.3%	97.1%
Yes	3.3%	12.2%	0.7%	2.7%	0.7%	2.9%
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**
	X^2=15.442; df=1; p=.000		X^2=2.989; df=1; p=.084		X^2=3.836; df=1; p=.050	

Given that the findings illustrate significant racial differences in experiencing police stops and searches, I next examine whether there are differences in how members of each group perceived their treatment at the hands of the police during these encounters (see also Weitzer and Tuch, 2002; Gabbidon et al., 2011).

[26] I also examined within gender-racial differences in police searches. These results are not reported for the sake of brevity. The results indicate, however, that significant racial differences in experiencing police searches exist for both men (X^2=21.766; df=2; P=.000) and women (X^2=8.828; df=2; P=.012).

Treatment by the Police

All respondents who indicated that they had been stopped by the police in the past two years (N=423) were also asked about their treatment at the hands of the police. Specifically, respondents were asked: 1) whether they were told the reason for the stop; 2) whether they felt the police officer treated them fairly; 3) whether the police officer treated them with respect; 4) and whether they were "upset" by their last police stop. The findings indicate that there are significant racial differences in the respondents' feelings about their treatment at the hands of the police. Overall, Black respondents felt most negatively about their treatment by the police, while white respondents felt most positively. For example, almost half of Black respondents (46.6%) felt that they were treated "unfairly" by the police during their last encounter, compared to 16.8% of Chinese and only 12% of white respondents (Table 3.20). Similarly, 43.1% of Black respondents reported that they felt "very upset" by the way that they were treated by the police during their last stop, compared to 20.6% of Chinese and 15.5% of white respondents.

Table 3.20 Respondents' Feelings About Their Last Police Encounter, by Race.

Feelings about treatment during last encounter with the police	BLACK	CHINESE	WHITE	Chi-Square Sig. Level
Police did not provide a reason for the stop	29.9%	10.3%	6.3%	X^2=35.303; df=2; p=.000
Respondent feels that they were treated unfairly	46.6%	16.8%	12.0%	X^2=55.064; df=2; p=.000
Police officer was disrespectful	42.5%	17.8%	15.5%	X^2=35.305; df=2; p=.000
Respondent was "very upset" by the stop	43.1%	20.6%	15.5%	X^2=33.544; df=2; p=.000
Sample Size	**174**	**107**	**142**	

An analysis of within-race gender differences in feelings about treatment by the police did not yield many statistically significant results. However, the results presented in Table 3.21 indicate that white women were less likely to feel that they were treated with disrespect than white men (X^2=9.637; df=1; p=.002).

Table 3.21: Respondents' Feelings About Their Last Police Encounter, by Race, by Gender.

Feelings about treatment	BLACK		CHINESE		WHITE	
	Female	Male	Female	Male	Female	Male
Police did not provide a reason for the stop	27.0%	32.9%	9.8%	10.6%	5.8%	6.8%
	X^2=.741; df=1; p=.389		X^2=.020; df=1; p=.888		X^2=.066; df=1; p=.797	
Respondent feels that they were treated unfairly	46.1%	47.1%	22.0%	13.6%	8.7%	15.1%
	X^2=.017; df=1; p=.896		X^2=1.250; df=1; p=.264		X^2=1.367; df=1; p=.242	
Police officer was disrespectful	36.0%	49.4%	22.0%	15.2%	5.8%	24.7%
	X^2=3.221; df=1; p=.073		X^2=.801; df=1; p<.371		X^2=9.637; df=1; p=.002	
Respondent was "very upset" by their last police stop	40.4%	45.9%	24.4%	18.2%	10.1%	20.5%
	X^2=.523; df=1; p=.469		X^2=.597; df=1; p=.440		X^2=2.932; df=1; p=.087	
Sample Size	**89**	**85**	**41**	**66**	**69**	**73**

The evidence presented above suggests that Black respondents are more likely to be stopped and to be searched by the police and less likely to be happy about the treatment that they received by the police than are either white or Chinese respondents. In order to further explore how respondents felt about their treatment by the police, I examined an additional question to determine whether the respondents believed they have been the victim of police racial profiling.

Victim of Police Racial Profiling

In order to test whether respondents believed they had been the victim of police racial profiling, the following question was posed: "In your opinion, have you ever been a victim of racial profiling by the police?" In line with the findings related to perceived treatment at the

hands of the police, the data illustrate significant racial differences in the likelihood of feeling that one has been the victim of racial profiling. Indeed, as Table 3.22 indicates, almost one-quarter of Black respondents (23.0%) believed that they had been racially profiled by the police, compared to 7.1% of Chinese respondents and just 2.4% of white respondents. A second question, examining vicarious experience with racial profiling, was also posed. As such, respondents were asked: "Have any of your close friends or family members been the victim of racial profiling by the police?" As indicated in Table 3.22, significant racial differences with regards to vicarious experience with racial profiling emerged. Indeed, almost half of Black respondents said that they have a close friend or family member who has been the victim of police racial profiling, compared to 10.3% of Chinese and 17.4% of white respondents.

Table 3.22: Percent of Respondents who have Personal or Vicarious Experience with Police Racial Profiling, by Race.

Experience with Police Racial Profiling	BLACK	CHINESE	WHITE	Chi-Square Sig. Level
Personal experience	23.0%	7.1%	2.4%	X^2=122.400; df=2; p<=.000
Vicarious experience	46.0%	10.3%	17.4%	X^2=195.581; df=2; p<=.000
Sample Size	**513**	**504**	**505**	

An examination of gender differences continues to highlight the pattern illuminated above. As indicated in Table 3.23, within the group most likely to report having been the victim of racial profiling (Black respondents), Black males (39.4%) were more likely than Black females (14.1%) to report this type of victimization. According to the data, two out of every five Black male respondents felt that they had been the victim of police racial profiling. Amongst white respondents, men were also more likely to report being the victim of police racial profiling than were women. The gender difference for Chinese respondents did not reach statistical

significance. Likewise, none of the within-race gender differences for vicarious experience with racial profiling were statistically significant.

Table 3.23: Percent of Respondents who have Personal or Vicarious Experience with Police Racial Profiling, by Race and Gender

Victim Profile	BLACK		CHINESE		WHITE	
	Female	Male	Female	Male	Female	Male
Personal experience	14.1%	39.4%	5.4%	9.3%	0.7%	4.8%
	X^2=42.329; df=1; p=.000		X^2=2.853; df=1; p=.091		X^2=9.013; df=1; p=.003	
Vicarious experience	44.7%	48.3%	9.0%	11.9%	19.2%	14.9%
	X^2=.606; df=1; p=.436		X^2=1.176; df=1; p=.278		X^2=1.563; df=1; p=.211	
Sample Size	**333**	**180**	**278**	**226**	**297**	**208**

The data indicate that there were clear racial differences in experiencing police stops and in perceived treatment at the hands of police officers. In the following section, a series of multivariate analyses are performed to determine which theoretically relevant factors influence the likelihood of being stopped and searched by the police. The following section addresses the question of whether race remains a significant predictor of involuntary police contact once other theoretically relevant factors have been taken into account statistically.

MULTIVARIATE ANALYSIS

The findings presented above suggest that Black respondents are most likely to report being stopped by the police and to be stopped multiple times. Black respondents are also most likely to report being searched by the police during their last police stop, to report they were the victim of racial profiling, and to say that they have a close friend or family member who has been racially profiled by the police. The results suggest that Black racial background is an important factor predicting these types of experiences with the police. In order to determine whether racial differences in police stops and searches are influenced by other theoretically

relevant variables, a series of multivariate analyses were performed. The results of these analyses are presented below. The theoretical relevance of the variables included in the logistic regressions is discussed in Chapter Two. A full description of the dependent and independent variables is presented in Appendix B.

Predicting Police Stops

In this section I present the results of logistic regressions predicting multiple police stops. Table 3.24 presents the results of the logistic regression on multiple police stops for the entire study population. In Model A (Table 3.24), both Black and Chinese racial background are entered into a logistic regression equation predicting multiple police stops (defined as three or more police stops in the past two years)[27]. White racial background is the reference category.

[27] This analysis was also conducted using one and two stops as the cut-off point. Each analysis produced similar results; however, the odds ratio increased when looking at three or more stops. Therefore, three or more stops is used in the analysis to show the profound racial differences in experiencing multiple police stops.

Table 3.24: Logistic Regressions Predicting Multiple Police Stops (1=Stopped Three or More Times; 0=Stopped Less than Three Times)[28]

PREDICTOR VARIABLES	MODEL A			MODEL B		
	B	Sig	Odds	B	Sig	Odds
Black	1.159	.000	3.19	1.103	.001	3.01
Chinese	-0.463	.156	0.63	0.035	.931	1.04
Age				-0.050	.000	0.96
Gender (1=Male)				0.860	.000	2.36
Foreign Born				-0.166	.520	0.85
Unemployed				0.073	.854	1.08
Social Class				0.047	.828	1.05
Education				-0.076	.314	0.93
Community Disorder				0.135	.000	1.15
Criminal Record				1.135	.000	3.11
Alcohol Use				0.120	.030	1.13
Marijuana Use				-0.073	.828	0.93
Driving Frequency				0.215	.004	1.24
Public Activities				-0.034	.269	0.97
Constant	-2.355	.000	0.52	-2.787	.001	0.06
Nagelkerke R Square	**.077**			**.315**		

Sample size=1,522

Consistent with the analysis presented above, the data suggest that Black respondents are significantly more likely to report multiple police stops than whites, while Chinese respondents are less likely to report such encounters. In Model B, other demographic and lifestyle variables that might predict police stops are entered into the equation. The results suggest that Black racial background remains a strong predictor of police stops after other theoretically relevant factors have been taken into account. Indeed, the odds ratio suggests that Blacks are three times more likely to experience multiple police stops than their white counterparts. By contrast, after controlling for other relevant factors, Chinese racial background is not found to be a significant

[28] Initially this analysis was also performed using a dichotomous variable – stopped/not stopped. However, the racial differences that emerged were not as strong as for the multiple-stop variable. Therefore the multiple-stop variable has been utilized for the analysis.

predictor of police stops. Indeed, the data suggest that Chinese respondents are just as likely to be stopped by the police as whites.

The results further suggest that both age and gender are strongly related to the likelihood of being stopped by the police on multiple occasions. In general, younger adults and males are more likely to be stopped than older adults and females. Social class measures, however, are not related to multiple stops. Furthermore, the results suggest that driving frequency, living in a high-crime neighbourhood, alcohol consumption and a criminal record all increase the likelihood of being stopped by the police. Marijuana use is not related to the probability of being stopped by the police. Those who use marijuana are no more likely to report being stopped by the police on three or more occasions than those who do not use the drug.

Table 3.25 examines factors that predict the likelihood of experiencing multiple police stops amongst the Black males in the sample. This analysis (and the analyses presented in Tables 3.27, 3.29, and 3.31) has been performed on the Black male population because they were shown in the findings presented above to have the highest levels of involuntary police contact, and were more likely than other respondents to view these interactions negatively. Furthermore, the extant literature also identifies Black males as having amongst the most tenuous relationship with the police, being more likely than members of other race/gender groupings to be stopped and searched by the police, and to perceive their treatment at the hands of police negatively (Skolnick, 1966; Neugebauer-Visano, 1996; Russell, 1998; James, 1998; Jones-Brown, 2000; Brunson and Miller, 2006). As such, I wanted to determine whether the combination of status attributes and other personal characteristics that predict multiple police stops for the three groups also predict police stops for Black males.

Table 3.25: Logistic Regressions Predicting Police Stops for Black Males (1=Stopped Three or More Times; 0=Stopped Less than Three Times)

PREDICTOR VARIABLES	MODEL A		
	B	Sig.	Odds
Age	-0.058	.008	0.94
Foreign Born	-0.417	.425	0.66
Unemployed	-0.340	.632	0.71
Social Class	0.881	.045	2.41
Education	-0.209	.234	0.81
Community Disorder	0.144	.020	1.16
Criminal Record	2.114	.000	8.28
Alcohol Use	0.133	.229	1.14
Marijuana Use	0.372	.530	1.45
Driving Frequency	0.065	.668	1.07
Public Activities	-0.047	.469	0.95
Constant	-0.293	.857	0.75
Nagelkerke R Square	**.508**		

Sample size=180

As with the logistic regression predicting multiple stops for all respondents, age remained a significant predictor, with younger Black males being more likely to be stopped multiple times than older Black males. The results also suggest that social class is positively related to multiple stops. Indeed, amongst Black males, the higher the self-reported social status, the more likely they are to report being stopped by the police (see also Wortley et al., 1997). Furthermore, having a criminal record and living in a high crime neighbourhood both increased the probability of experiencing multiple police stops for Black males. Unlike the results for the entire study population, driving frequency and self reported alcohol use did not predict multiple police stops amongst the sub-sample of Black males. Therefore, this finding suggests that the police are less attentive to some of the risk factors that affect decisions to stop the general population when deciding to stop Black males. Below, I examine a more intrusive form of police contact – police searches.

Predicting Police Searches

I conducted a series of regression analyses to determine which factors influence the likelihood of experiencing police searches. First, I conducted a regression analysis on police searches amongst the entire sample to see if racial differences in experiencing police searches remain after theoretical variables are introduced. In Model A (Table 3.26), both Black and Chinese racial background are entered into a logistic regression equation. White racial background is the reference category.

Table 3.26: Logistic Regressions Predicting Police Searches (1=Searched by Police; 0=Not Searched)

PREDICTOR VARIABLES	MODEL A			MODEL B		
	B	Sig	Odds	B	Sig	Odds
Black	1.452	.000	4.27	0.989	.043	2.69
Chinese	0.002	.997	1.00	0.325	.586	1.38
Age				-0.054	.000	0.95
Gender (1=Male)				1.021	.005	2.78
Foreign Born				-0.396	.280	0.67
Unemployed				-0.441	.442	0.64
Social Class				-0.291	.354	0.75
Education				-0.187	.094	0.83
Community Disorder				0.105	.004	1.11
Criminal Record				1.500	.000	4.48
Alcohol Use				0.007	.936	1.01
Marijuana Use				-0.152	.742	0.86
Driving Frequency				0.124	.206	1.13
Public Activities				0.036	.395	1.04
Constant	-4.129	.000	0.02	-2.747	.017	0.06
Nagelkerke R Square	**.063**			**.300**		

Sample size=1,522

Consistent with the bivariate results presented above, the results suggest that Black respondents are significantly more likely than respondents from other racial groups to report being searched

during their last police stop. Chinese respondents, on the other hand, are no more likely to report being searched than white people. In Model B, additional demographic variables that might predict being searched by the police are entered into the equation. As with the findings for multiple police stops, Black racial background remains a significant predictor of police searches, but the size of the coefficient is smaller. The odds ratio suggests that Black respondents are 2.7 times more likely to be searched by the police than white respondents, after controlling for theoretically relevant variables.

As was the case for police stops, age and gender are also strongly related to the likelihood of being searched by the police. Overall, younger adults and males are more likely to report being searched by the police than older adults and females. Living in a high crime neighbourhood and having a criminal record are once again related to the likelihood of being searched by the police. Unlike the findings for police stops, driving frequency is not related to being searched by the police. The social class measure is also not related to police searches.

Again, given the frequency with which Black males report being searched by the police (Rosenfeld et al., 2012), I wanted to examine which factors might influence the likelihood of being searched by the police amongst the sub-sample of Black males. These findings are presented in Table 3.27.

Table 3.27: Logistic Regressions Predicting Police Searches for Black Males (1=Searched by Police; 0=Not Searched)

PREDICTOR VARIABLES	MODEL A		
	B	Sig	Odds
Age	-0.138	.001	0.87
Foreign Born	0.207	.768	1.23
Unemployed	-0.502	.575	0.61
Social Class	-0.419	.507	0.66
Education	-0.584	.047	0.56
Community Disorder	0.109	.136	1.12
Criminal Record	2.904	.000	18.25
Alcohol Use	0.095	.540	1.10
Marijuana Use	-1.004	.206	0.37
Driving Frequency	0.172	.359	1.19
Public Activities	-0.008	.918	0.99
Constant	2.274	.323	9.72
Nagelkerke R Square	**.557**		

Sample size=180

As the analysis shows, having a criminal record was the strongest factor predicting the likelihood of being searched by the police amongst the sample of Black males. Black males with a criminal record were 18 times more likely to have been searched by the police during their last encounter than Black males without a criminal record. It should be stressed that although having a criminal record was the strongest predictor of experiencing police searches for both the entire study population and amongst Black males, Black racial background remained a strong predictor of experiencing a police search as indicated in Table 3.26 above.

As with the results of the logistic regression predicting police searches for all respondents, age remains a significant predictor of police searches; younger Black men are more likely to report being searched by the police than older Black men. The results also suggest that level of education is also a factor influencing the likelihood of being searched by the police; Black males with lower levels of education are more likely to be searched by the police than Black males with higher levels of education. Interestingly, the likelihood of being stopped by the

police increases with social status for Black males, yet this is not the case for police searches. None of the other demographic or lifestyle variables are related to the likelihood of being searched by the police amongst the sample of Black men.

Previous research documenting the impact of police-initiated contact on citizen attitudes toward the police has produced mixed findings (Weitzer and Tuch, 2002). Having determined that racial differences in experiencing police stops and searches remain after controlling for theoretically relevant variables, I wanted to come full circle to see whether racial background and involuntary contact with the police influence evaluations of police performance and perceptions of police bias amongst this sample. These questions are addressed below.

Predicting Evaluations of Police Performance

First I wanted to see whether racial background, experiencing police stops and other theoretically relevant variables influence evaluations of police performance. Table 3.28 presents the results of an OLS regression equation that utilizes the Police Evaluation Index, discussed above, to examine which variables influence respondents' evaluations of police performance amongst the entire sample. In Model A (Table 3.28), only Black and Chinese racial backgrounds are entered into the regression equation, with white as the reference category. The results suggest that both Chinese and Black respondents evaluate police performance less favourably than do white respondents.

Table 3.28: OLS Regression on Evaluations of Police Performance

Predictor Variables	MODEL A			MDEL B			MODEL C		
	B	Beta	Sig.	B	Beta	Sig.	B	Beta	Sig.
Black	-1.576	-.233	.000	-.732	-.108	.002	-.461	-.068	.070
Chinese	-1.863	-.274	.000	-1.984	-.292	.000	-2.007	-.295	.000
Age				.022	.105	.000	.022	.104	.000
Gender				.288	.044	.070	.262	.040	.099
Foreign Born				-.055	-.008	.774	-.058	-.009	.761
Unemployed				.140	.011	.661	.129	.010	.686
Social Class				.341	.060	.021	.352	.062	.017
Education				-.003	-.001	.952	-.001	-.001	.977
Community Disorder				-.050	-.054	.039	-.044	-.047	.073
Crime Victim				-.515	-.053	.033	-.496	-.051	.039
Arrested				-1.206	-.096	.000	-1.061	-.085	.001
Police Stops				-.430	-.122	.000	-.260	-.074	.100
Vicarious Police Contact				-1.214	-.164	.000	-1.188	-.160	.000
Chinese times Stops							.248	.033	.306
Black times Stops							-.466	-.104	.018
Constant	8.917	-----	.000	8.081	-----	000	7.968	-----	000
R Square	.065			.173			.180		
Adjusted R Square	.064			.166			.172		

Sample size=1,522

In Model B, a number of additional independent variables are added to the regression equation. The results suggest that Chinese and Black racial backgrounds remain significant predictors of police evaluations after other factors have been taken into statistical account. In other words, racial differences in police searches cannot be explained by racial differences in other relevant variables. Furthermore, the results suggest that age, social class, being the victim of a crime, having been arrested, having been stopped by the police, and having friends or family members who had been the victim of racial profiling are also statistically significant predictors. Older respondents and those who reported higher social class backgrounds evaluated the police more highly than younger respondents and respondents from lower-class backgrounds. In contrast, respondents who have been the victim of a crime, who have been stopped multiple

times, have been arrested by the police, and who have friends and family members who have been the victim of racial profiling all evaluated police performance more negatively than those who have not had these experiences.

In Model C, an interaction term on police stops is introduced.[29] After the introduction of this interaction term, the main effect for police stops becomes insignificant. However, the effect of police stops on Blacks' evaluations of the police remains statistically significant. This finding suggests that frequent police stops have a stronger negative influence on Black respondents' evaluations of police performance than they do for either white or Chinese respondents (see also Dean, 1980: 458-9).

Since the findings in Table 3.28 indicate that police stops influence perceptions of police performance amongst Black respondents, I also wanted to examine other factors that influence evaluations of police performance amongst Black males in the sample. Table 3.29 presents the results of an OLS regression equation examining variables that influence Black male respondents' evaluations of police performance.

[29] Based on previous research, I expected there to be racial differences in the effect of police stops on perceptions of the police (see Hagan et al., 2005). As such, a series of interaction terms were added to the equation. Chinese times Stops is an interaction term created for Chinese respondents who have been stopped by the police. The variable was created by multiplying the total stop variable with the Chinese variable. Chinese Stop is a dummy variable coded 1=Chinese and Stopped; 0=everyone else. Black times Stop is an interaction term created for Black respondents who have been stopped by the police. The variable was created by multiplying the total stop variable with the Black variable. Black Stop is a dummy variable coded 1=Black and stopped; 0=everyone else.

Table 3.29: OLS Regression on Evaluation of Police Performance for Black Males

Predictor Variables	MODEL A			MODEL B		
	B	Beta	Sig.	B	Beta	Sig.
Age	.050	.211	.007	.030	.127	.105
Foreign Born	.623	.072	.330	.276	.032	.657
Unemployment	.570	.052	.470	.725	.066	.349
Social Class	.117	.018	.807	.244	.038	.605
Education	-.081	-.035	.635	-.134	-.058	.418
Community Disorder	-.213	-.230	.003	-.146	-.157	.040
Crime Victim				-1.080	-.109	.135
Arrested				-.286	-.033	.675
Police Stops				-.409	-.140	.104
Vicarious Police Contact		-----		-1.478	-.203	.007
Constant	5.667		.000	7.970	-----	.000
R Square		.134			.223	
Adjusted R Square		.104			.177	

Sample size=180

In Model A (Table 3.29), a number of independent variables measuring respondents' demographic characteristics are introduced into the regression equation. The results suggest that older Black males evaluate the police more favorably than those who are younger. On the other hand, Black males who live in areas with high levels of community disorder evaluate the police more negatively than those who do not.

In Model B, a number of independent variables related to respondents' own criminal victimization and experience with the police are introduced into the equation. Interestingly, age was no longer a significant predictor of evaluations of police performance after these other variables had been taken into account, whereas community disorder remained significant. Furthermore, having vicarious experience with police racial profiling negatively influenced evaluations of police performance; Black males who reported that they have friends or family members who have been racially profiled evaluated the police more negatively than those who did not. Being foreign-born, employment status, having been arrested, or experiencing multiple

police stops were not significant predictors of evaluations of police performance amongst Black males.

Predicting Perceptions of Police Bias

Table 3.30 (below) presents the results of an OLS regression equation that utilizes the Police Bias Index, discussed above, to examine which variables influence respondents' evaluations of police bias.

Table 3.30: OLS Regression on Perceptions of Police Bias

Predictor Variables	MODEL A			MODEL B			MODEL C		
	B	**Beta**	**Sig.**	**B**	**Beta**	**Sig.**	**B**	**Beta**	**Sig.**
Black	12.780	.171	.000	8.028	.177	.000	6.440	.142	.000
Chinese	-.968	-.014	.629	2.039	.045	.181	.611	.013	.709
Age				-.161	-.114	.000	-.166	-.118	.000
Gender				.084	.002	.934	.053	.001	.959
Foreign Born				-1.422	-.032	.251	-1.407	-.032	.255
Unemployment				-3.358	-.038	.103	-3.403	-.038	.098
Social Class				-.593	-.016	.531	-.628	-.016	.506
Education				.819	.067	.005	.834	.068	.004
Community Disorder				.656	.105	.000	.634	.101	.000
Crime Victim				1.842	.028	.235	1.874	.029	.227
Arrested				4.394	.052	.033	4.082	.049	.049
Police Stops				1.198	.051	.042	-.975	-.041	.340
Vicarious Police Contact				14.053	.283	.000	13.852	.279	.000
Chinese Stop							3.192	.064	.042
Black Stop						000	3.085	.103	.015
Constant	25.121	-----	.000	24.661	-----		26.002	-----	.000
R Square		.086			.238			.242	
Adjusted R Square		.085			.232			.234	

Sample size=1,522

In Model A (Table 3.30), only Black and Chinese racial backgrounds are entered into the regression equation. White is the reference category. The results suggest that Blacks perceive significantly more police bias than whites. In Model B, a number of additional independent variables are added to the regression equation. The results suggest that Black racial background

remains a significant predictor of perceived police bias after other factors have been taken into account. Other results suggest that: 1) older respondents perceive less police bias than do younger respondents; 2) people with higher levels of educational attainment perceive more bias than less educated respondents; 3) people with higher incomes perceive more bias with people with lower incomes; 4) people residing in high crime neighbourhoods perceive more bias than those who do not; 5) those who have been arrested perceive more bias than those who have not been arrested; 6) those who use marijuana perceive more bias than those who do not use marijuana; 7) those who report friends/family who have been racially profiled are more likely to perceive bias than those who do not; and 8) respondents who have been stopped by the police multiple times perceive more bias than those who have not.

In Model C, an interaction term on police stops is introduced[30]. After the introduction of this interaction term the main effect for police stops becomes insignificant. However, the effect of police stops on Black and Chinese respondents' perceptions of police bias remains statistically significant. This finding suggests that frequent police stops have a stronger impact on perceptions of police bias amongst Black and Chinese respondents relative to white respondents.

As Black males have amongst the most strained relationship with the police (Brunson, 2007), I also wanted to examine which factors influence Black males' perceptions of police bias. Table 3.31 (below) presents the results of an OLS regression equation examining variables that influence Black males' perceptions of police bias. In Model A (Table 3.31), a number of independent variables related to respondents' demographic characteristics are introduced into the OLS regression equation. The results suggest that older Black males perceive less police bias than do younger Black males. Being foreign-born, employment status, living in social housing

[30] See justification in footnote 29, above.

projects, social class and level of education are variables that were unrelated to perceptions of police bias amongst Black males.

Table 3.31: OLS Regression on Perceptions of Police Bias for Black Males

Predictor Variables	MODEL A			MODEL B		
	B	Beta	Sig.	B	Beta	Sig.
Age	-.344	-.244	.002	-.133	-.095	.226
Foreign Born	4.500	.087	.254	5.892	.114	.114
Unemployment	-3.706	-.057	.445	-4.060	-.063	.380
Social Class	-.585	-.015	.841	-.085	-.002	.976
Education	1.125	.081	.282	1.347	.097	.174
Community Disorder				.750	.136	.076
Crime Victim				.800	.014	.852
Arrested				-2.776	-.053	.496
Police Stops				2.121	.122	.157
Vicarious Police Contact				14.223	.328	.000
Constant	45.617	-----	.000	23.122	-----	.003
R Square	.063			.216		
Adjusted R Square	.036			.170		

Sample size=180

In Model B, a number of independent variables related to respondents' own criminal victimization and experience with the police are introduced into the equation. After controlling for other factors, age ceased to be a significant factor influencing Black males' perceptions of police bias. Vicarious police contact – that is, having friends or family members who have been the victim of racial profiling – was the only variable that stood as a significant predictor of Black males' perceptions of police bias; Black males who have friends or family members who have been the victim of racial profiling by the police were more likely to perceive the police as biased than those who have not had this vicarious experience.

CONCLUSION

Overall, the findings presented in this chapter are largely consistent with previous Canadian, American and British research on police relations with Black citizens (Wortley et al., 2007; Weitzer and Tuch, 2006; Sharp and Atherton, 2007). Indeed, the findings show that, on the whole, Black Torontonians view the police more negatively and report more frequent and more hostile interactions with the police than do members of other racial groups. The findings also indicate that the frequency and perceived nature of these police interactions has a stronger impact on Blacks' perceptions of the police that it does for either whites or Chinese. Finally, the findings of this chapter highlight the importance of shared or vicarious experiences with the police – this was an important factor influencing respondents' perceptions of the police. This finding is particularly salient for police relations with Black communities, as these shared experiences must be fully understood if we are to truly grasp the conflicts between Black communities and the police (Feagin, 1991; Brunson and Miller, 2006).

The chapter has also shed light on some important racial and gender differences in Toronto residents' perceptions of and experiences with the police. The bivariate analysis of citizen evaluations of the police indicates that overall, white respondents had the most favourable evaluations of police performance, followed by Black and Chinese respondents. This finding differs somewhat from that found in previous studies, as Black respondents held more favourable views of police performance than did Chinese respondents. In other research involving multiple racial/ethnic groups, Black respondents typically hold the most negative views of the police, and whites the most positive, with other groups falling in between (see Weitzer, 2010). It is difficult to determine whether the Chinese respondents were dissatisfied with the police, or whether their responses were a result of their inexperience with the institution. A substantial proportion of the

Chinese respondents reported that they did not know or had no opinion about the performance of the police. This finding could be due to the fact that Chinese residents reported lower rates of vehicle and pedestrian stops than did either Black or white residents and, therefore, had less experience with the police upon which to base an opinion. Furthermore, it may be that Chinese residents are more recent immigrants, and thus have less experience with, or knowledge of, the police in Toronto.

In terms of perceptions of police bias, Black respondents were most likely to perceive the police as biased, followed by white and then Chinese respondents. Again, this finding differs slightly from previous research. While Blacks perceived the most police bias, which is typical, it is another racialized group – Chinese people – who perceived the least bias in policing. This finding is interesting because most research involving multiple racial/ethnic groups finds that Black and white respondents have the most divergent perceptions of police bias, with other groups, such as Hispanics, falling in between (see Skogan et al., 2003; Weitzer, 2010). It should be noted that Chinese respondents did perceive the most bias with regards to language, and also perceived the most police bias against Chinese people. This finding may reflect the concerns of Chinese people with respect to police treatment. Chinese respondents' lack of perceived police bias in other areas may again be a product of their lack of experience with the police in Toronto.

Interestingly, the analysis of racial and gender differences in perceived police bias indicates that Black women perceived almost as much police bias as Black men. This finding is interesting because, as in previous research (Harris, 1999; Bowling and Phillips, 2002; Wortley and Owusu-Bempah, 2011b; Lamberth, 1998), Black men in this study are the most likely to report being stopped by the police, and to report being stopped multiple times. Black men also reported the highest rates of police searches of all respondents, and were the most likely to report

being the victim of racial profiling. Furthermore, in terms of their perceived treatment at the hands of the police, Black males were least likely to report that the police officer told them the reason for their last police-initiated encounter, least likely to believe they were treated fairly during their last stop, least likely to believe they were treated with respect, and most likely to say that the stop left them feeling upset. So while Black males experienced the most stops and felt most negatively about these stops, Black womens' views of the police were equally negative. This finding no doubt points to the importance of vicarious experiences with the police, as suggested by the multivariate analysis (detailed below). Gabbidon et al. (2011) also found similar perceptions of the police amongst Black men and women, despite differences in frequency and nature of police contact. Gabbidon et al. (2011) attribute the Black women's views to their association with Black males. They also suggest that Black womens' poor experiences with the police as victims of crime might also contribute to their negative perceptions of the police. Unfortunately, the latter was not tested for in the present study.

The bivariate findings are largely confirmed by the results of the multivariate analysis. First, the logistic regressions indicate that being Black was an important predictor of experiencing multiple police stops and being searched by the police. In addition to Black racial background, being young, male, living in a neighbourhood characterized by disorder, and having a criminal record all increased the chances of experiencing multiple police stops and being searched by the police. Driving frequency and alcohol consumption also contributed to the likelihood of being stopped multiple times. These results are largely consistent with previous research findings produced in the United States, Great Britain and Canada (see Bowling and Phillips 2002; Engel et al. 2004; Alpert et al 2005; Wortley and Owusu-Bempah, 2011b). Among the sample of Black males, age and social status impacted the likelihood of being stopped by the

police. Consistent with previous findings, young Black men and those reporting higher socio-economic status were more likely to be stopped (see Wortley et al., 1997). Likewise, young Black men, Black men with a criminal record, and those with lower levels of education were more likely to be searched by the police. Interestingly, reporting a higher social status protected Black males from experiencing police searches, but not police stops (see also Rosenfeld et al., 2012). To the contrary, reporting a higher social status was a significant predictor of experiencing multiple police stops for Black males. Why is this so? Perhaps higher status Black males look out of place in affluent neighbourhoods or driving expensive cars, and thus attract the attention of the police – resulting in an increased likelihood of being stopped. Their social status may not be apparent to an officer until after an interaction has been initiated, explaining why they are not subsequently searched.

The multivariate findings also support the bivariate findings related to citizen evaluations of police performance presented above, and perceptions of bias/corruption. Indeed, the OLS regression on perceptions of police performance shows that both Black and Chinese racial background were significant in predicting evaluations of police performance. Likewise, age, social class, living in a disordered community, being the victim of a crime, having been arrested, stopped on multiple occasions, and having vicarious experience with racial profiling all predicted evaluations of police performance amongst the entire study population. These findings are supported by the results of previous research (see Weitzer, 2010). Importantly, this analysis indicates that the frequency of experiencing police stops reduces confidence in the police, and increases perceptions of police bias. However, the results also suggest that the negative impact of stops on attitudes towards the police is much stronger for Black people than for white or Chinese respondents. This finding is highly consistent with the fact that, during their last police stop,

Black people were more likely than white or Chinese people to feel that they had been treated unfairly and with disrespect (see Table 3.20) (see Dean, 1980). After the variable of having been stopped by the police was accounted for, Chinese racial background, age, social status, being the victim of a crime, having been arrested, and vicarious experience with racial profiling all predicted evaluations of police performance. Amongst Black males, being young, living in a disordered community, and having vicarious experience with racial profiling negatively influenced evaluations of police performance. However, when lifestyle variables were added to the equation, age ceased to be a significant predictor of evaluations of the police.

Finally, the bivariate findings relating to citizen perceptions of police bias are also confirmed by the results of the multivariate analysis which show that racial background is a strong predictor of perceptions of police bias. Indeed, the findings indicate that Black racial background, age, living in a social housing project, living in a disordered neighbourhood, having been arrested by the police, experiencing multiple police stops, and having vicarious experience with racial profiling were all significant predictors of police bias. When the interaction term on police stops was introduced, Black racial background this time remained a significant predictor of perceptions of police bias; so too did age, living in a disordered neighbourhood, having been arrested by the police, and having vicarious experience with racial profiling. As was the case for evaluations of police performance, the main effect for police stops became insignificant. However, for perceptions of police bias, the findings suggest that frequent police stops increased perceptions of bias amongst both Black and Chinese respondents. White respondents perceptions of police bias were not significantly influenced by frequent police stops. Amongst the sample of Black males, vicarious experience with racial profiling emerged as the only statistically significant variable predicting perceptions of police bias.

Overall, this chapter has shown that being Black is a strong predictor of experiencing police stops and searches in Toronto. Furthermore, Black racial background is also a strong predictor of evaluations of police performance and perceptions of police bias. Importantly, the analysis shows that being stopped by the police is important in understanding Black citizens' negative appraisals of police performance, and their perceptions of police Bias. Frequent police stops negatively influence how Black people evaluate police performance, and increase their perceptions of police bias. So too does vicarious experience with racial profiling, something Black people are most likely to report. It is important to consider how negative perceptions of the police developed through extensive personal and vicarious experience might influence how Black people interpret and express themselves during future encounters with the police. Indeed, Black people may be suspicious and distrustful of police-initiated encounters. Such suspicion and distrust may negatively impact their demeanour when dealing with police which, in turn, could result in less respectful treatment at the hands of the police (Wortley and Owusu-Bempah, 2011b). This disrespectful treatment may further confirm the negative perceptions of the police held by many Black people; thus the relationship between police stops, perceptions of the police and the interpretation of police encounters may be reciprocal (see Engel et al., 2010; Wortley and Owusu-Bempah, 2011b). In the next chapter I will turn to examine the perceptions and experiences of a group of young Black men who have extensive experience with the police.

Chapter Three Research Questions Addressed in Brief

1) Do Black males in Toronto hold different perceptions of police performance and police bias than Black females or members of other racial groups?

There were no significant gender differences in Black respondents' evaluations of police performance or perceptions of police bias. Overall, Black respondents perceived more bias than either Chinese or white respondents. Chinese respondents rated the performance of the police more negatively than Black or white respondents.

2) Do Black males experience higher levels of contact with the police than Black females or members of other racial groups, and do they feel differently about their treatment at the hands of the police?

Black males experienced more frequent police stops and searches than other respondent groups. Black males were also more likely than other respondents to feel negatively about their treatment from the police during these encounters.

3) Do racial differences in the frequency and nature of police contact help explain racial differences in evaluations of police performance and perceptions of police bias?

Being stopped by the police lowered evaluations of police performance amongst Black respondents, and increased their perceptions of police bias. By contrast, being stopped by the police had no effect on Chinese respondents' evaluations of police performance, but did increase their perceptions of police bias. Police stops had no effect on white respondents' evaluations of police performance or perceptions of police bias.

CHAPTER 4

Young Black Men and Policing in Toronto[31]

> The only way to police the ghetto is to be oppressive. None of the police commissioner's men, even with the best in the world, have a way of understanding the lives led by the people they swagger about in twos and threes controlling. Their very presence is an insult, and it would be even if they spent their entire day feeding gumdrops to children. They represent the force of the white world, and that world's criminal profit and ease, to keep the black man corralled up here, in his place. The badge, the gun in the holster, and the swinging club make vivid what will happen should his rebellion become overt... (Baldwin, 1961)

As discussed in Chapter Two, the extant literature identifies youths' perceptions and experiences with the police as an important topic of investigation. For one, youth are more likely to experience involuntary contact with the police due to their disproportionate involvement in crime and their frequent, often unsupervised and unstructured, use of public space (Hurst et al., 2000; Hinds, 2009). Furthermore, youth are more likely to be subject to police scrutiny and surveillance, and to report being harassed and treated with disrespect by the police (Hurst et al., 2000). This is particularly true for young Black men who are viewed in the eyes of the police as "symbolic assailants" or "born suspects" (Skolnick, 1966; Jones-Brown, 2007; Brunson and Miller, 2006). In addition to the frequency and nature of young people's contact with the police, Hinds (2008) puts forth several reasons why a focus on youth is important: 1) police have wide discretionary powers when dealing with youth; 2) police contact with youth is largely unsupervised; and 3) it is hypothesised that experiences and opinions formed in youth will have a lasting effect on adult attitudes and behaviours (Hinds, 2009: 10).

[31] I would like to thank Alexis Lemajic, Laura Pirotta, Adrian Howard, and Kevin Lunianga for their help with data entry for this project.

The aim of this chapter is to examine the views and experiences of the very group known to have the most adversarial relationship with the police – young, disadvantaged Black males. Utilizing data from a sample of 328 young Black men, this chapter uses a mixed methods approach to investigate young Black males' perceptions of and experiences with the police in Toronto. Following a discussion of study methodology, the chapter examines the young men's views of police performance, and levels of trust and confidence in the police. The chapter then examines their perceptions of police bias and corruption. Next, the chapter examines the frequency and nature of police contact amongst this sample of young Black men. The chapter then turns to look at qualitative data capturing the youths' positive and negative experiences with the police to help contextualize the quantitative findings presented earlier in the chapter. The chapter ends with a final, quantitative analysis that documents the impact of both positive and negative experiences on the youths' perceptions of the police, followed by a summary of the findings.

METHODOLOGY

Data utilized in the following analysis was gathered as part of the evaluation of a gang intervention-prevention project that aimed to reduce the proliferation of gangs in three of Toronto's priority neighbourhoods (Wortley et al., 2012: 7). The priority neighbourhood designation was given to thirteen of Toronto's 140 neighbourhoods by the City of Toronto, and emerged largely out of the work of the Strong Neighbourhoods Task Force. Part of the vision of the Task Force was to ensure that all Toronto neighbourhoods contain a mix of services and facilities that correspond to and meet the needs of their residents (United Way and the City of Toronto, 2005: 19). In order to identify areas where community services and facilities were

lacking, the Task Force analyzed whether the neighbourhoods had key services in proximity to the residents who needed them most. Among the services analyzed were those intended for the general population (recreation and community centres, libraries, schools, community health centres and hospitals), and those intended for residents with specific needs (children's services, youth services, services for new immigrants, employment services, and food banks). Using GIS buffering techniques, the Task Force identified those neighbourhoods with poor coverage (lack of facilities and services) and high need (population groups requiring the services and facilities) (City of Toronto: 2006, 6-9).

The Task Force also relied on a range of socio-economic indicators to identify neighbourhoods that were below the city average. These socio-economic indicators included: median household income; proportion of income spent on shelter costs; percent of population aged 25+ that is unemployed; percent of dwellings requiring major repair; percent of population that are immigrants; and the number of low birth weight babies per 1,000 live births (City of Toronto, 2006: 11). The services and facilities data and the socio-economic data were combined by the Task Force, which resulted in the identification of nine neighbourhoods. Subsequently, the City of Toronto factored in its Community Safety Plan and identified areas experiencing elevated levels of violence (City of Toronto, 2006: 15). The result was the identification of 13 priority neighbourhoods that were deemed in need of investment and intervention based on a lack of services, the presence of high-needs populations, and public safety concerns.

In order to determine which of the thirteen priority neighbourhoods were at the highest risk of youth gang affiliation and activity, the Research Unit of the Social Development, Finance, and Administration Division at the City of Toronto developed the "Toronto Youth Crime Risk Index." This measurement tool utilized a number of key data sources including: 1) socio-

economic and demographic data; 2) number of youth safety programs in the area; 3) local crime statistics; and (4) data on public perceptions of neighbourhood safety. These data were combined in order to identify which communities were at high risk for youth gang activity. Ultimately, the areas of Jamestown-Rexdale, Jane-Finch, and Weston-Mt. Dennis were identified as the most appropriate priority neighbourhoods for a gang intervention-prevention program. Community stakeholders and members of the Toronto Police Service concurred that these areas were particularly vulnerable to youth gang affiliation and activity (Wortley et al, 2012: 18). A fourth priority neighbourhood, Lawrence Heights, was included as a comparison neighbourhood to test program effects. Lawrence Heights matched the three program neighbourhoods with respect to socio-economic disadvantage and youth criminal activity (Wortley et al, 2012: 24). It should be stressed that by Toronto standards, these four neighbourhoods are notorious for their levels of crime, violence, and gang activity. All are located in the north-western section of the city.

The pilot project, called the Prevention Intervention Toronto (PIT) program, was funded by a grant from the National Crime Prevention Centre, managed by the City of Toronto, and administered by a community agency – Jewish Vocational Services. The evaluation of the project was conducted by a team led by Professor Scot Wortley and Professor Julian Tanner from the University of Toronto. The program was aimed at youth aged 13-24 who were involved with gangs, or who were at risk of gang attachment/affiliation. Prevention Intervention Toronto had three consecutive intake streams that took in a total of 312 youths over the three-year duration of the project (2009-2011). Youth were recruited into the PIT program through social workers, community workers, PIT case managers, probation and parole officers, and through self-referral. Youth for the comparison group were referred to the study by community partners and stakeholders (Wortley et al, 2012: 38).

A screening process was first undertaken to determine eligibility for either the program or the comparison group. The screening instrument included a detailed questionnaire that measured a youth's eligibility based on three criteria: 1) a moderate or high risk of gang involvement[32] or former or current gang involvement; 2) being aged 13-24; and 3) residence in one of the project neighbourhoods (Wortley et al, 2012: 24). The screening instrument was designed so that youth who had no gang-involved peers could be admitted to the program as long as they scored sufficiently high on the general risk assessment (Wortley et al, 2012: 38).

The screening process for potential PIT clients was administered by PIT case managers. Comparison group screenings were conducted by members of the evaluation team. A total of 641 young people completed the screening process. Overall, 596 of these 641 youth (92.9%) were found eligible for either the PIT program or the comparison group. Of these 596 young people, 328 were young Black males. The present analysis is based on this group of 328 young Black men.

The primary source of data comes from intensive one-on-one interviews conducted with each youth at the beginning of their participation with the PIT study (pre-tests). Youths who granted their permission were interviewed by a member of the evaluation team at one of the project sites (in the case of the PIT youths), or at a local community centre or school (in the case of the control-group youths). The interviews took on average 55 minutes to complete.[33] The interviews included a range of questions about the youth's personal and family background,

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[32] Risk of gang involvement was determined according to the following criteria: A) Self-identification as a former or current gang member; B) Case Manager identification as a former or current gang member; C) Met Euro-Gang criteria; D) Moderate to high risk score; E) Qualitative exemption. A moderate to high risk score was based on family, peer, school and personal risk factors. The "qualitative exception" provided the PIT case managers who performed the screening process the ability to accept youth who did not meet the acceptance criteria but who they felt were eligible in some other way (16 youth were accepted through the qualitative exception). For a full description see Wortley et al. (2012: 41-44)

[33] The interviews with the PIT youth took slightly longer than the interviews with the youth from the comparison group (63 minutes versus 47 minutes).

educational attitudes and behaviours, attitudes towards employment and employment status, drug and alcohol use, self-control, empathy, and optimism. Importantly, for the present study, the interview also collected information about each respondent's personal experiences with victimization and criminal offending, their level of gang involvement and attitudes towards gangs, as well as their previous contact with police, courts and correctional agencies. Questions examining each youth's perceptions of the fairness and legitimacy of the Canadian criminal justice system were also posed (Wortley et al., 2012: 25).

The present analysis focuses on those interview items related to: 1) evaluations of police performance; 2) perceptions of trust and confidence in the police; 3) perceptions of police bias and corruption; 4) frequency of police initiated contact; 5) feelings about police treatment during police encounters; and 6) self-reported positive and negative experiences with the police.

The young Black men in the sample ranged in age from 13-26, with an average age of 18 years. The majority of these young men (78%) were Canadian-born. The average age of immigration for foreign-born respondents was eight years old. Just under two-thirds (61.3%) of the young men were going to school when they began their involvement with the study. Additionally, 22.6% of the young men were employed on either a full or part-time basis. Many of the youth resided in single parent homes. Just over one-quarter (28%) of the youth reported that they were living with both parents at the time of the interview, whereas 50% were living with their mother only, and 4% were residing with their father.

The data also indicate that this sample is characterized by high rates of both criminal activity and criminal victimization. Almost three-quarters of the youth (73.4%) had used marijuana at least once in the six months prior to their pre-test interview, and over half reported using marijuana on a weekly basis. Over half of the youth (54.3%) also self-identified as a

current or former gang member. Furthermore, almost all of the youth (92.7%) reported engaging in some form of violent or property crime in the six months before their interview, and a similar percentage (89.0%) said that they had been victims of a violent or property crime during this time frame. In sum, the data presented in Table 4.1 suggest that the following analysis is based on a sample of highly disadvantaged Black youth who hail from economically and socially vulnerable communities, most of whom have been involved in "criminal" behaviour.

Table 4.1 Sample Characteristics Measured During Pre-test Interviews

Characteristics		
Age (Years)	Range: Mean: S.D.:	13-26 18 3.02
Immigration Status	Foreign Born: Average age at Immigration:	22.0% 8
Attending School (Full or Part-Time)	Yes:	61.3%
Employed (Full or Part-Time)	Yes:	22.6%
Living arrangement	Both Parents: Mother Only: Father Only: Other:	28.1% 49.8% 4.3% 17.8%
Marijuana Use (Past six months)	Never: A few times: At least once a week:	26.6% 18.3% 55.1%
Self Identified as Gang Member (Current or former)	Yes:	54.3%
Criminal Activity - property or violent (Past six months)	Yes:	92.7%
Victimization - property or violent (Past six months)	Yes:	89.0%
N=328		

S.D. = Standard Deviation

PERCEPTIONS OF POLICE PERFORMANCE AND TRUST AND CONFIDENCE IN THE POLICE

Previous research indicates that young people generally hold less favorable views of the police than do older citizens (Cao et al., 1996; Chandek, 1999; Cheurprakobkit, 2000). In this section I examine the youths' perceptions regarding the performance of the Toronto Police Service, and their level of trust and confidence in this institution. All respondents were first asked to evaluate whether they agreed or disagreed with the following statements: 1) innocent people are almost never arrested; 2) the police almost never help people; 3) life would be more difficult if we did not have the police; 4) the police do a good job of keeping my neighbourhood safe; 5) the police in my neighbourhood are friendly and easy to talk to; 6) the police will protect you from criminals if you report a crime; 7) I trust the police; 8) I have confidence in the police; 9) if I had a problem I would go to the police for help; 10) the police care about the people who live in my community; and 11) I have a lot of respect for the police (see questions I2c – I2i and questions K1a – K1e in Appendix C).

Table 4.2 presents the responses to these eleven items evaluating police performance and confidence in the police. As the results illustrate, this group of young men did not have a very good opinion of the Toronto Police Service. Indeed, only one-quarter of the youth had faith that the police "almost never" arrest innocent people, and nearly half of respondents felt that the police "almost never" help people. Similarly, less than one-third of the youth felt that the police do a "good job" of keeping their neighbourhoods safe and less than 20% felt that the police in their neighbourhoods are "friendly or easy to talk to." In addition to police performance, I also examined how much trust and confidence the young men had in the police. The youths' views with regards to trust and confidence appear to be more negative than their views towards police performance. For example, over three-quarters of the youth stated that they do not trust the

police, and just over 70% of the youth indicated that they lack confidence in the police. It is unsurprising then, that with so little trust and confidence in the police, only about half of the young men felt that the police can or will provide them with protection if they report a crime (as indicated in Table 4. 2).

Table 4.2 Youth Perceptions of Performance/Trust and Confidence in the Police

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
Innocent people are almost never arrested.	3.7%	21.6%	12.8%	43.9%	18.0%
The police almost never help people.	10.7%	35.4%	18.9%	30.5%	4.6%
Life would be more difficult if we did not have the police.	19.2%	41.8%	12.5%	19.8%	6.7%
The police do a good job of keeping my neighbourhood safe.	5.5%	23.2%	15.2%	35.7%	20.4%
The police in my neighbourhood are friendly and easy to talk to.	1.8%	15.2%	15.5%	38.1%	29.3%
The police will protect you from criminals if you report a crime.	3.0%	24.4%	23.8%	28.7%	20.1%
I trust the police.	2.4%	12.2%	9.8%	45.4%	30.2%
I have confidence in the police.	1.8%	12.2%	14.6%	43.3%	28.0%
If I had a problem I would go to the police for help.	1.2%	8.5%	14.0%	43.9%	32.3%
The police care about the people who live in my community.	1.8%	18.0%	18.6%	33.5%	28.0%
I have a lot of respect for the police.	1.8%	14.3%	14.6%	41.8%	27.4%
N=328					

Evidently, and in line with previous research findings (Hurst et al., 2000; Brunson and Miller, 2006), the young men in this sample evaluated the performance of the Toronto Police negatively and held very low levels of trust and confidence in the institution. In addition to feelings about police performance and levels of trust and confidence in the police, I also examined the youths' perceptions of police bias and corruption. These findings are explored in the next section.

PERCEPTIONS OF POLICE BIAS AND CORRUPTION

American research has found Black inner-city youth to perceive the police as biased and corrupt (Brunson and Miller, 2006). In order to tap into youths' perceptions of police bias and corruption in Toronto, the young men were asked to state their level of agreement (or disagreement) with the following statements: 1) the police treat young people worse than older people; 2) the police treat poor people worse than rich people; 3) the police treat people from my racial group worse than people from other racial groups; 4) police often use violent or unfair methods to get information; 5) if it's your word against the police, the police will always win; 6) many police officers are engaged in criminal activity; 7) the police never snitch on another cop – even if the cop has broken the law; and 8) the police often abuse their power (see questions K1f to K1l and I2g in Appendix C).

The findings indicate that the majority of the young men in this sample believed that there is police bias and corruption. Indeed, over three-quarters of the young men felt that the police treat young and old people differently, and over 70% believed that there is bias with regards to wealth. In terms of perceptions of racial bias, three-quarters of the young Black men felt that "the police treat people from my racial group worse than people from other racial groups." Overall, approximately three-quarters of the young men agreed, to some extent, with the bias statements presented. Conversely, only about 10% of the youth in this sample felt that the police treat people equally according to age, wealth or race.

Table 4.3 Youth Perceptions of Police Bias and Corruption

Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
The police treat young people worse than older people.	35.7%	42.1%	13.4%	6.7%	2.1%
The police treat poor people worse than rich people.	35.7%	36.9%	14.9%	11.6%	0.9%
The police treat people from my racial group worse than people from other racial groups	36.9%	38.7%	13.4%	9.5%	1.5%
Police often use violent or unfair methods to get information.	34.5%	48.5%	11.3%	4.6%	1.2%
Police often abuse their power.	44.5%	43.3%	7.0%	3.4%	1.8%
If it's your word against the police – the police will always win.	43.6%	44.2%	7.6%	4.0%	0.6%
Many police officers are engaged in criminal activity.	25.6%	35.7%	32.0%	6.1%	0.6%
The police never snitch on another cop –even if the cop has broken the law.	30.5%	30.5%	17.7%	14.9%	6.4%
N=328					

Related to the treatment of different groups is the manner in which police gather information from members of the public. Respondents were asked whether they thought "the police often use violent or unfair methods to get information." Many of the youth believed this to be the case. Indeed, 83% of the young men felt that the police often use violent or unfair methods to obtain information from citizens. Similarly, many of the youth felt that the police abuse the powers afforded to them. For example, almost nine out of every ten of the young Black men stated that the police *often* abuse their power. Finally, the findings indicate that a large proportion of the young men also believed that many police officers are engaged in illegal activity, and that officers will not "snitch" on another cop, even if that cop has broken the law. This is an interesting finding given that police often criticize Black communities for failing to

cooperate with police investigations, and for promoting a "stop snitching" culture (Powell, 2008).

In sum, the data presented in Table 4.3 indicate that almost all of the young Black men in this sample believed the police are biased and engage in corrupt behaviour. As was the case with the youths' views about police performance and trust and confidence in the police, the young men in this sample held overwhelmingly negative views when it came to police bias. In the next section I move from examining the youths' perceptions of police bias and corruption to examining their personal experiences with the police.

FREQUENCY AND NATURE OF POLICE CONTACT

Previous research (Black, 1980; Walker, 1992; Hurst et al., 2000), as well as the results presented in the previous chapter, suggest that young Black men elicit the suspicion of the police and are subject to high levels of police contact, harassment and degradation. The manner in which the police treat Black males in urban areas is well documented (Brunson and Miller, 2006). However, as Brunson and Miller point out, much of the previous research has focused on adult populations (2006). For this reason, I wanted to examine police treatment of young Black men in the Canadian context (see Neugebauer-Visano, 1996; James, 1998; Wortley and Tanner, 2003). It is important to point out that the study population is comprised of a very particular group of young men. The youths in this group reported very high levels of delinquency, criminal behaviour, and victimization, and they reside in high-crime neighbourhoods – all factors likely to increase police contact. Nevertheless, it is also important to examine the experiences of those who have the highest levels of contact, and the lowest opinions of the police (such as this group)

in order to identify the sources of police antipathy and its consequences (Brunson and Miller, 2006). Below I examine the young men's contacts with the police.

Stops and Searches

The first item in this series of questions on police contact simply asked the young men how often they had been stopped in the previous six months. This question addresses police-initiated contacts, not instances where the youth had approached or sought help from an officer. As Table 4.4 indicates, almost all (87.5%) of the young men had experienced at least one police stop in the previous six months. In fact, many of the young men reported frequent police-initiated stops. For example, over one-third of the youth reported that they had been stopped ten or more times by the police in the previous six months. Similarly, 40.0% of the young men reported that they had been stopped by the police between two and nine times over the previous six months.

Table 4.4 Percent of Respondents Who Have Been Stopped and Searched by the Police in Previous Six Months

Contact with Police	0	1	2-5	6-9	≥ 10
Number of police stops in past 6 months	12.5%	9.1%	30.2%	9.8%	38.4%
Number of times searched by police in past 6 months	25.0%	10.1%	30.2%	9.5%	25.3%
N =328					

Next, the youth were asked about a more intrusive form of police contact – searches. The results indicate that many of the young men had also been physically searched by the police in the past six months, and that a substantive proportion had been searched on multiple occasions. For example, just over one-quarter of the young Black men said that they had been searched by the police on ten or more occasions in the previous six months. Similar to the rates for police stops, about 40% of the young men stated that they had been searched by the police between two

and nine times in the previous six months, while only 10.1% reported being searched just once. Clearly, most of these young Black men experienced frequent police-initiated contacts, and many reported being searched. In the following section, I examine how the youth felt they were treated by the police during these encounters.

Feelings about police treatment

For those youth who had experienced police-initiated contact in the previous six months (N=290), two further questions were asked about their perceived treatment at the hands of the police. The first question asked about fairness. The young men were first asked to rate how fairly they were treated by the police on a scale from one to ten, where one represents very unfair treatment, and ten represents very fair treatment. These responses were re-coded in the following manner: a response of 1 or 2 was coded "very unfairly;" a response of 3 or 4 was coded "unfairly;" 5 or 6 was coded as "neutral;" 7 or 8 was coded as "fairly;" and 9 or 10 was coded as "very fairly."

Table 4.5 Percent of Respondents Who Feel they were Treated Fairly or Unfairly During their Last Police Stop

Fairness	Very Unfairly	Unfairly	Neutral	Fairly	Very Fairly
Fairness	44.7%	21.6%	19.9%	8.9%	4.8%
N=290					

As the data in Table 4.5 indicate, very few of the youth felt that they were treated "fairly" (8.9%) or "very fairly" (4.8%) during their most recent police encounter. On the other hand, the majority of the youth (66.3%) believed that they were subjected to some level of unfair treatment. Indeed, 44.7% of the young men felt that they had been treated "very unfairly" during their last police stop.

Youth who had experienced police initiated contact over the previous six months were also asked how respectfully the police had treated them during their last stop. Again, the young men were asked to rate police respectfulness on a scale from one to ten, where one represents "very disrespectfully" and ten represents "very respectfully". The responses were recoded in the following manner: a response of 1 or 2 was coded as "very disrespectfully;" a response of 3 or 4 was coded as "disrespectfully;" 5 or 6 was coded as "neutral;" 7 or 8 was coded as "respectfully;" and 9 or 10 was coded as "very respectfully."

Table 4.6 Percent of Respondents Who Feel they were Treated Respectfully or Disrespectfully During their Last Police Stop

Respectfulness	Very Disrespectfully	Disrespectfully	Neutral	Respectfully	Very Respectfully
Respectfulness	46.9%	21.7%	15.2%	7.9%	8.3%
N=290					

Much like the results for perceived fairness, the majority of the youth felt that they were not treated in a respectful manner during their most recent police encounter. Indeed, 68.6% of the youth felt that they had been treated "disrespectfully" or "very disrespectfully" during their last police stop. As in the case of perceived fairness (see Table 4.5), the most negative response category garnered the highest number of responses. As Table 4.6 shows, almost half (46.9%) of the youth who had been stopped by the police in the past six months felt that the police had treated them "very disrespectfully," while 21.7% reported that they believed the police had treated them "disrespectfully." As the data quite clearly indicate, the young Black men in this sample do not believe that they received fair and respectful treatment at the hands of the police. Quite the opposite – like young Black men profiled in other research studies (Jones-Brown, 2000; Brunson and Miller, 2006) and the adult Black males profiled in Chapter Three, these

young men experienced the police as repressive and hostile. This raises an important question. To what extent did the young men elicit unfair and disrespectful treatment from the police by being rude or disrespectful themselves? I will attempt to address this question in the next chapter by examining the views of Black male police officers.

Arrests and False Arrests

The findings presented in the previous three tables reveal that the young men in this sample experienced frequent police contacts, and interpreted their treatment during these encounters negatively. The data presented in Table 4.7, below, looks at how many of the youth have been arrested or charged by the police.

Table 4.7 Percent of Respondents Who Have Been Arrested by the Police in Their Lifetime and the Last Six Months

Arrests	0	1	2	3 or more
Number of times arrested or charged by police in lifetime	30.2%	16.8%	12.8%	40.2%
Number of times arrested or charged by police in past 6 months	67.1%	19.5%	7.3%	6.1%
N=328				

First, the youth were asked to report how many times they had been arrested or charged by the police in their lifetime. As the data indicate, over two-thirds (69.8%) of the young men have been arrested or charged by the police at least once in their lifetime. Indeed, the majority of these youth (53.0%) reported that they have been arrested or charged on two or more occasions in their lifetime, and 40.2% have been arrested three or more times. The youth were also asked how many times they have been arrested or charged by the police in the last six months. One out of every three respondents (32.9%) reported that they had been arrested or charged by the police

in the six months leading up to the interview. One out of eight (13.4%) had been arrested or charged on multiple occasions over the past six months. Considering their high levels of police contact, relatively few of the youth reported having been either arrested or charged by the police in the six months leading up to their interview. Below, I examine the youths' experiences with false arrests.

The data presented in Table 4.2 above indicates that two-thirds of the respondents believeed that the police sometimes arrest innocent people. Acknowledging, of course, that a person may be arrested mistakenly by the police, the young men who reported that they had been arrested in their lifetime were asked whether they themselves had ever been falsely arrested or charged with a crime that they did not commit. A substantial proportion of the youth who had been arrested or charged by the police believed that they had been falsely arrested or charged with a crime. Indeed, the data presented in Table 4.8 indicates that over half (57.2%) of the youth who had been arrested or charged believed that they had been falsely arrested by the police at least once in their lifetime. Furthermore, 12.2% reported that they had been falsely arrested three or more times.

Table 4.8 Percent of Respondents Who Report Being Falsely Arrested by the Police

Frequency of False Arrest	Never	Once	Twice	Three or More Times
Number of false arrests - lifetime	42.8%	25.3%	19.7%	12.2%
N=229				

These data show that most of the young Black men in this sample held negative appraisals of police performance, and lacked trust and confidence in the police. The vast majority of the young men also perceived the police to be biased and corrupt, and reported that they are

treated unfairly and with disrespect during their police encounters. In the section below I look at the young men's experiences in greater detail by examining qualitative data related to both positive and negative experiences with the police.

POSITIVE AND NEGATIVE POLICE EXPERIENCES – QUALITATIVE ANALYSIS

In order to gain a better understanding of the nature of the young Black men's experiences and perceptions, I further examine two open-ended questions related to police contact (see Appendix C - questions K2 and K3). The youths were first asked whether they had ever experienced a negative encounter with the police. If their response was yes, they were asked to recount their most negative police experience. As shown in Table 4.9, about three-quarters (74.1%) of the young men said that they had at least one negative experience with the police. The youth were also asked whether they ever had a positive experience with the police, and if so, to recount their most positive police experience. In this case, just under one-third (31.1%) of the young Black men said that they had had a positive experience with the police (Table 4.10).

Table 4.9 Percent of Respondents who Report Having a Negative Police Experience with the Police

Negative Experience	
No	25.9%
Yes	74.1%
N=328	

Table 4.10 Percent of Respondents who Report Having a Positive Police Experience with the Police

Positive Experience	
No	68.9%
Yes	31.1%
N=328	

To examine these positive and negative experiences in more depth, I performed an automatic recode procedure within SPSS for the questions concerning positive and negative police experiences. This procedure produced a unique identifier for each qualitative response. A data-led approach to the analysis of these qualitative responses was then undertaken (Braun and Clarke, 2006; Howitt, 2010). I reviewed each of the responses for the question on negative experiences and gave them a unique code, or multiple codes, based on the content of the response. Once all of the responses for this question had been coded, I organized and grouped them according to the major themes that emerged. Once the set of original themes had been developed, I re-analyzed each of the responses to ensure that it fit under the theme it was assigned to, and with the other responses within that categorization. The responses that did not fit within their original theme were re-categorized appropriately. It should be noted that some of the responses fit under more than one of the themes, and were dealt with accordingly. The categorizations were not treated as mutually exclusive; i.e. the negative experience of a youth could fit into one or more of the themes. For example, if a respondent said that he was often stopped by the police and had been assaulted by a police officer, the response would be coded as both "stopped" and "assaulted." The same procedure was undertaken for the responses to the question on positive police experiences.

***Negative Experiences* (N=243)**

Four major themes related to negative police experiences emerged from the data.[34] Table 4.11 presents four types of negative police experience that the youth reported, along with the percentage of youth from the entire sample (N=328) who said that they had endured this type of

[34] These themes are adapted from Weitzer and Tuch (2004). These themes are not mutually exclusive. A youth's most negative police experience could fit under more than one of the themes.

experience. As indicated in the table, a substantial proportion of the youth reported that their most negative police experience involved being victimized by excessive force or police brutality (36.0%) or by being stopped, searched or detained by the police (29.0%). The four types of negative experience are examined in greater detail below.

Table 4.11 Percent of Respondents Who Report Having a Negative Experience with the Police by Type of Experience

Type of Negative Experience	Yes	No
Brutality - Excessive force	36.0%	64.0%
Stopped/Searched/Detained	29.0%	71.0%
Verbal abuse/Disrespect/Harassment	18.6%	81.4%
False arrest/False evidence[35]	7.9%	92.1%
N=328		

Stopped/Searched/Detained by the Police

The frequency with which the police stop Black males, particularly young Black males, remains a contentious issue in Toronto as it does in many other large urban centres. As the previous chapter showed, Black men in Toronto are more likely than their white and Chinese counterparts to report being stopped by the police, and much more likely to report being stopped on multiple occasions. As Table 4.6 above indicates, the young men in this sample reported very high levels of police-initiated contact; almost nine in ten youths said that they had been stopped by the police in the six months leading up to the interview, and over one-third reported that they had been stopped by the police on ten or more occasions over this time period. Many of the young men in this sample objected to their frequent police-initiated encounters. Almost one-third (29%) of the entire sample of youth said that being stopped, searched or detained by the police

[35] While 57.2% of the youth felt that they had been falsely arrested by the police (see Table 4.8), only 7.9% of the youth stated that a false arrest constituted their most negative police experience. It is possible that many of the youth who reported being falsely arrested by the police also had another experience that they felt was more negative.

constituted their most negative police experience. Willie[36], for example, discussed being stopped on multiple occasions in the same day. In Willie's response to the question "what is your most negative police experience?" He replied:

> *Had a lot, can't remember a specific incident. I get stopped a lot – one night I was stopped 4 times in one night and questioned. It is annoying because they don't look at anyone else* (Willie, 17).

While it is not clear exactly what Willie meant by police not looking "at any one else," it may well be that he was suggesting the police only stop young Black men – a feeling shared by young Black men in other Toronto-based studies (Neugebauer-Visano, 1996; James, 1998). Darryl also said he got stopped by the police on a regular basis and, like Willie, alluded to the racial profiling of Black men, saying that he often fits a description: "*Every time I get stopped it's bad. They always say that I fit a description even if I'm not even in the same area"* (Darryl, 21). "Fitting a description" is a common reason for being stopped, according to these young men – as it is for many Black males (Smith et al., 2007). Darryl was certainly not the only youth in the sample who was told that he was being stopped for that reason:

> *I was at my house and the police busted in my back yard and said I matched the description* (Steve, 21).
>
> *They said I looked like I stole something. They said if I matched their description they would have to restrain me* (Curtis, 14).
>
> *They said they were looking for someone. I fit description* (Andrew, 20).

The young men also described where they get stopped by the police. Many of the youth specifically mentioned that they were walking down the street or in another public place when they were stopped by the police. Like many of his peers, Shawn reported being stopped on multiple occasions; however, he was the only young man to make reference to his

[36] The names of study participants have been changed to protect their identity.

"neighbourhood" and its influence on his frequent police encounters: "*If you live in my hood they always stop you, pat you down, ask you to empty your pockets and ask you where you are going. It is disrespectful*" (Shawn, 22). In addition to the stigma of their neighbourhoods, their own criminal histories – perhaps unsurprisingly – were believed to influence the frequency with which the young men got stopped by the police: "*I was walking down the street and they stop me for no reason, because they know my history. They stop me and ask for guns and drugs and I've got none*" (Michael, 20). While some of the young men in the program have been – and continue to be – involved in a criminal lifestyle, the continued police contacts must be particularly frustrating for those who are trying to desist (see also Brunson and Miller, 2006). Willie and Shawn said that they found the stops to be "annoying" and "disrespectful." This sentiment was held by many of the youths in the study.

Verbal Abuse/Disrespect/Harassment

It is not just the frequency with which the young men got stopped that they found objectionable, but also the way in which the police acted or behaved towards them during their repeated encounters. Many of the young men felt that they were harassed by the police. As John said: "*They constantly harass me. Ask me where I'm going and where my papers are*" (John, 19). I have remarked before that the treatment of young Black men in some Toronto neighbourhoods is reminiscent of Apartheid South Africa (see Rankin and Winsa, 2012). In making these comments, I was referring to the pass laws under Apartheid that required Black people to carry proper documentation and severely restricted their movement. John seems to be a case in point; he referred to his "papers" in the way Black South Africans talked about their "pass." Without good reason to believe John had done something wrong, the police had no business asking him

where he was going or to provide his "papers." Yet this type of police activity appears to be commonplace, and was certainly perceived by the youths as harassment.

For some of the young men, harassment by the police came during the course of what could be described as legitimate police business. The following quotations are illustrative:

> *[The] cop who arrested me bothers me and tries to search me every time he sees me, even if I'm not doing anything* (Tray, 23).

> *[I was] standing outside the mall and two police came up to me and just started asking me questions and harassing me for no reason. Just embarrassing me in front of everyone* (Marc, 20).

Marc said that he was harassed by the police while standing outside of the mall. It is quite possible that the police were conducting a legitimate investigation; however, Marc was still embarrassed because the interaction drew spectators. Being stopped and questioned in front of other members of the public was something many youth felt is unpleasant, particularly when they believed they had done nothing wrong. Such activities on the part of the police also perpetuate stereotypes associating young Black men with crime in the minds of both the police and the general public (Harris, 1999).

Furthermore, although it is to be expected that the police will sometimes stop and question someone who has done nothing wrong, there is little or no excuse for being rude or disrespectful to a member of the public. This type of interaction, however, was common amongst the young men, as Kwesi, a 22 year old explained: *They always, like, tease you and insult you like you are stupid."* Kwesi felt that he was belittled by the police. This type of behaviour undoubtedly goes against the professionalism that the police try to portray and, if found valid, may be grounds for a complaint. The use of racist language by the police when dealing with a member of the public is even more objectionable. Dustin, who provided the following statement, claimed that he was called racist names by a police officer while he was skateboarding with his

friends: *[I was] skateboarding at Yorkdale Mall parking lot, white cop told us to leave calling us a "bunch of niggers"* (Dustin, 14). Henry not only said that he was called racist names, but that he was also assaulted in the course of an interaction with the police: "*[A] policeman called me racist words like nigger and punched me in the face and cut my lip*" (Henry, 20). The use of racist language by a police officer is not only highly offensive, but also a clear violation of the anti-racism and human rights policies developed by the Toronto Police Service and other services within the GTA. Although commonly dismissed as the actions of a few "bad apples" (Tator and Henry, 2006), the testimony of the young men provides evidence that overt racism is still a problem within policing in Toronto.

Brutality and Excessive Force

Physical abuse at the hands of the police was the most common negative experience reported by the young men. Being "beat up" or "stomped out" by the police appeared to be a fairly regular occurrence for these young men. Many who had this type of experience simply stated that they got beaten up by the police without elaborating on the circumstances. From the accounts provided, it seems that an uncooperative or disrespectful demeanour on the part of the youth might have resulted in them being roughed up. Furthermore, being in possession of drugs or a weapon was often reason enough for a beating by police. Yet the young men often felt that they were abused by the police for no reason at all. As Robert said, he was just going about his business when he was "violated" by the police:

> *I was going to my aunt's house and police stopped me asking me where I was going. Then grabbed my arms and one grabbed my crotch to see if I had a gun or something. But I was wearing shorts. I felt really violated* (Robert, 20).

Chris also complained that his genitals were grabbed by the police when they were trying to search him:

> *All officers are gay. One officer trying to search me and I was refusing because there was no charge. He then started to grab my nuts like a "faggot". So I don't like officers, they abuse their power* (Chris, 18).

Chris admitted that he did not want the officers to search him because he was not being charged with anything. When we look at the rates of formal arrests compared to the number of times the young men had been stopped and searched over the past six months (Tables 4.4 and 4.9), we can see that many, if not most, of the interactions did not result in any formal action by the police.

Unsurprisingly then, the young men were ambivalent about the interactions, and did not want to talk to the police. Devon claimed that failure to talk on his part resulted in an assault:

> *They arrested me for no reason and I wasn't talking. They saw that I had a crack in my head. I had it stitched from basketball. They banged my head against the wall and cracked it open again to make me talk. It started bleeding again, I had to get it re-stitched because one of the stitches came out. I was just turned fourteen* (Devon, 16).

Andrew said that he was beaten for failing to talk: "*Yes. When I was arrested for my last charge they assaulted me because I didn't want to say anything*" (Andrew, 24). Asking the police questions could also be rather dangerous for these young men. Any citizen in Canada has the right to ask a police officer to identify themselves; however, according to the respondents, some police seemed to not like being questioned, nor did they appreciate challenges to their authority. As Leon explained:

> *[I] tried to defend a friend who was being searched for no reason. I got charged with obstruction of justice. Another instance where I asked a police officer for his badge number and name. Supposedly I threatened him by saying I would shoot him. Got chased and pepper-sprayed and my little sister did too* (Leon, 21).

There are a number of organizations in Toronto that provide "know your rights" education seminars for youth to help equip them with the knowledge they need to interact with the police. However, there seems to be quite a difference between the rights as laid out in the *Canadian*

Charter of Rights and Freedoms and the rights that one can expect to be able to exercise when dealing with the police in one of Toronto's high-crime neighbourhoods. Previous research has illustrated how a lack of cooperation and hostile demeanor can increase the chances that a citizen will receive a formal sanction from the police (Engle et al., 2010). In the case of these young men, such hostility resulted in physical abuse rather than a formal sanction.

In the same way that asking a police officer for their name or challenging their authority should not result in an assault by the police, someone who has broken the law or who is perceived by the police to be lying does not warrant a beating. However, Doug felt that this is exactly what happened to him: "*They fucked me up. They thought I was lying about being somewhere. They fucked me up then took me to the police station. They punched me in the face, kicked me, stomped on me, etc. ...*" (Doug, 18). Doug said the police thought he was being untruthful, and he was therefore beaten up. Damon admits that he had a weapon on him "*[The] police stopped me and I disclosed that I had a weapon on me – I laid down, face down in the snow and when I handed them the gun, they stomped the shit out of me; they broke my ribs*" (Damon, 22). Damon was the recipient of "street justice." The police took the opportunity to administer their own justice before Damon had been found guilty in court.

The street justice that the youth are dealt at the hands of the police can also be accompanied by frivolous charges. In order to cover up a beating or to justify an assault, the police may lay charges of assaulting a police officer, resisting arrest, or obstructing justice. Carl recounted the following: "*[t]hey beat me up and then charged me with assaulting police*" (Carl, 18). Owen and Russell also talked about being charged by the police after they were beaten:

> *Police officers beat me up. They said I was resisting arrest. They used excessive force. They handcuffed and beat me two years ago* (Owen, 20).

> *I was behind the building and the police raided me, looking for drugs – thought I was selling drugs. They didn't find anything on me and they beat me up. Scraped my eye and head and had to go to an eye specialist. They then stood around and talked about what they were going to say I did. Said I was resisting arrest* (Russell, 22).

Like the young men discussed above, Russell felt that he was beaten because the police thought he was doing something wrong. When the police failed to find any evidence to support their suspicion, Russell claimed that they assaulted him and then charged him with resisting arrest, a seemingly easy way for the police to justify their actions. Although Russell acknowledged that the police made up the story to cover themselves, he did not mention having done anything about it. As Table 4.4, above illustrates, most of the young men felt that "if it's your word against the police, the police will always win." It is therefore quite unlikely that the young men would attempt to seek some kind of remedy for being wronged.

False Arrest and False Evidence

As shown in the first section of this chapter, almost two-thirds of the young men reported that they believed that the police sometimes arrest innocent people, and over one-third said that they themselves had been falsely arrested on at least one occasion in their lives. Furthermore, in recounting stories of police abuse, it was shown that the young men experienced false arrests as a result of being uncooperative, questioning authority, or to justify an assault that was received at the hands of police. It is unsurprising, then, that some youth reported false arrests as their most negative police experience.

Some of the youth reported being falsely arrested for crimes that had taken place in their area. When asked about his most negative police experience, Harry replied "*[g]etting arrested for something I didn't do – falsely accused of robbery*" (Harry, 24). Likewise, Maurice had a similar experience: "*[I was] falsely arrested for robberies in the area, they arrested me, when I*

had nothing to do with it" (Maurice, 18). In other circumstances the police may hand out a ticket for something the youth did not do. In Wade's case, for example:

> *I was walking down the street and the police were watching us and followed us on their bikes. They stopped me and said they saw me spit on the ground... I didn't spit on the ground. They gave me a ticket for spitting and I will never pay it* (Wade, 18).

It would be difficult for Wade to prove that he did not spit on the ground. Nevertheless, he said that he will never pay the ticket. Unfortunately, this could have negative consequences for him, and could lead to further charges for failing to pay the ticket when he encounters the police again. In a similar manner, Kofi claimed that having false evidence planted on him resulted in a trip back to prison "*[The police] arrested me and planted something on me so they could take me in – messed up parole, went back and did three years*" (Kofi, 21). In Wade's case, a false accusation led to a ticket that could likely be cleared up by paying a fine. In Kofi's case, the consequences were much more serious. Regardless of the seriousness of the outcome, false accusations and false arrests can have a long term impact on the lives of the young men. Evidently, the proactive policing practices undertaken in Toronto's priority neighbourhoods increase the chances that these youth will have negative encounters with the police that include false accusations and evidence planting. Furthermore, the seemingly minor infractions that can come as a result of these negative encounters can have serious consequences and lead to the further criminalization of these young men. By targeting these youth, and treating them negatively, the police "create" crime. The stigma of a criminal record, of course, can harm future employment opportunities for the young men. With limited employment opportunities, the chances of future offending are increased (Harris, 1999).

As illustrated by the stories provided above, the young men in this sample had a range of negative experiences with the police. The qualitative analysis provides support for the

quantitative findings. Indeed, many of the young men reported that they were frequently stopped by the police, and that they perceived these stops as unnecessary. The young men also felt that they were treated poorly by the police, and subjected to verbal abuse and harassment. Amongst the most serious form of police abuse is brutality and excessive force, the most commonly reported negative experience amongst these young men. What is troubling is that in addition to physical assaults, the young men claimed that they were sometimes subsequently charged by the police in an effort to cover their own backs. Such allegations suggest that young Black men's experiences with the police in Canada are similar to those reported in the United States and the United Kingdom. Indeed, research in the latter two countries has also found that young Black men feel that they are unfairly stopped, searched, arrested and verbally/physically abused by the police (Brunson and Miller, 2006; Sharp and Atherton, 2007). However, it must be acknowledged that not all of these young men's experiences with the police are negative. Below I examine the youths' positive experiences with the police.

Positive Experiences **(N=102)**

Five major themes related to positive police experiences emerged from the data. Table 4.12 presents the five types of positive police experience, and the percentage of youths from the entire sample who said that they had this type of experience. As indicated in Table 4.12, the youths' most common, positive experiences with the police occurred at school or during some type of program (13.1%), or involved the officer being nice, friendly or respectful (8.2%). The youths' positive experiences are explored in more detail below.

Table 4.12 Percent of Respondents Who Report Having a Positive Experience with the Police by Type of Experience

Type of Positive Experience	Yes	No
Police officer was involved in sport, school or other program	13.1%	86.9%
A police officer was nice, friendly or respectful	8.2%	91.8%
Police provided assistance in a crime	4.3%	95.7%
A police officer made nice gesture such as provided advice, bought the youth food	4.0%	96.0%
The police gave the youth a break	3.0%	97.0%
N=328		

Police Officer was Involved in Sport, School or Other Program

A police officer's involvement in a school, sport, or other form of program was the most common response given by the youth with regard to their most positive experience with the police. As noted above, police services within the Greater Toronto Area have exerted great effort to foster relations with minority communities, and Black communities in particular. Some of these initiatives include basketball and hockey programs that police officers coach or help out with. Other, somewhat more controversial initiatives include having police officers assigned to specific schools as "School Resource Officers," as is the case with the Toronto Police Service. As the following examples illustrate, police involvement in community programs and sports initiatives can have a positive effect on how some youth view the police.

> *At a community centre, [the police] played basketball with the young people in the after school program. Made us think, "maybe they aren't that bad after all" – I was running the program and so he came to talk to me after. The police officer had arrested me before, so he knew me* (Jamal, 23).

In the example above, Jamal had had contact with the officer before, and even though the officer had previously arrested him, Jamal was still able to see the positive side of the officer's

activities. Reggie, below, discussed the impact of the police coming to his school to talk to students.

> *The police coming to my middle school and talking about how they care about the community and are down to earth and not like what people think they are* (Reggie, 18).

While most of the community outreach programs and initiatives have not been subject to rigorous evaluation (Stenning, 2003; Owusu-Bempah and Wortley, 2014), the 13.1% of youth that stated that an officer's involvement in such a program was positive is an encouraging sign.

Police Provided Assistance in a Crime

The police simply performing one of their key functions – assisting crime victims – was viewed as the most positive type of experience for 4.3% of the youths. Some people living within impoverished and racialized communities have complained that they feel over-policed while being simultaneously under-protected; that while there may be a heavy police presence in their neighbourhoods, they do not feel that the police do enough to prevent crime or to help the victims of crime in these areas (McGhee, 2005). Nevertheless, Andre felt that the police response to his friends' victimization, and the way in which the police handled the situation, constituted his most positive police experience.

> *My friends got into an argument. They left and one of my friends got stabbed. The cop said they are going to find him. He came back and told us that he found who did it and made sure we knew that. That was good. I appreciated that* (Andre, 23).

As Andre noted, the fact that the police came back to follow up with him and his friends was viewed positively.

A Police Officer was Nice, Friendly or Respectful:

The positive way in which a police officer treated the young men or the people around them emerged as the second most common type of positive police experience. Fairness and friendliness on the part of an officer was a common theme within this response category. Some of the young men simply stated that an officer was "nice" or "friendly" during the course of an interaction. Others spoke specifically about feeling like they had been treated fairly, as Mark illustrated: "*[y]es the police have treated me fairly two different times …*" (Mark, 18).

Respectfulness on the part of the officer was also an important theme. Recall, in Tables 5 and 6 above, that very few of the young men reported being treated with fairness or respect when they had dealt with the police over the past six months. The disrespectful treatment that the young men received at the hands of the police often involved the police being rude and having an "attitude" when talking to the youth. When officers did not have an attitude, some youths noticed. When asked about his most positive police experience, Chris, a 19-year-old, recounted: *"Yes. [The] police saying "hi" without attitude."* Shawn had a similar experience: *"Yes. Late at night, some officers on their bikes came up and made a joke about how I should be sleeping. It was light-hearted, it wasn't rude or anything"* (Shawn, 14).

While some of the young men identified the behaviour of the officer as being positive, others went further to talk about the role that they themselves played in shaping the interaction. Sam spoke specifically about fairness: "*[I] have had a couple of experiences that the police were cool – where they were acting still human ... I treated them fair and they treated me the same"* (Sam, 13). Likewise, Nicholas talked about using his manners to avoid a negative encounter: "*There have been many times when I've just used my manners and they've gone about their business – where we've both been respectful"* (Nicholas, 18). A key aspect of the positive

treatment is the impact that interaction may have on the youths' views of the police. As the young man above pointed out, the police were acting "human." When recounting their most positive interaction, several of the young men commented that they did not feel like they were talking to the police.

The type of treatment that the young men have reported as their most positive police experience may be quite different from that which they usually received. Not only did many of these young men fit the description of the "symbolic assailant" – being young, Black, and some dressed in "street clothes" – but they also lived in high-crime areas of Toronto, and most admitted to being involved in crime and delinquency. These young men were likely the recipients of a hard-enforcement type of policing that is practiced in higher crime neighbourhoods rather than a "softer," community-style of policing intended to foster community relations. However, these two types of policing need not be mutually exclusive. As the youth in the very first quote in the series mentioned, he saw the positive side of an officer who had previously arrested him. Nice, fair, and respectful treatment can coexist with the police mandate to "serve and protect."

A Police Officer Made a Nice Gesture

In addition to receiving friendly or respectful treatment from the police, positive experiences also involved an officer going beyond what would usually be expected of them by providing the youths with something – material or otherwise – that they valued. Responses in this category included the youths recounting examples where a police officer provided them with advice or guidance that they thought was helpful. John's experience provides an example: *"[a]dvice, good conversations, advice for career in policing."* (John, 17) Some of the youth also said that a police officer had bought or given them something of value:

> *Gave money for lunch – officer in school* (Dan, 15).
>
> *I was with [Jeff] (a caseworker) and we went over to [the police division] to thank them for the tickets they gave us to go to Wonderland (a local amusement park)* (Kevin, 19).

As was the case with friendly or respectful officers, the officer making a nice gesture to the young men provided them with a view of the police that may be very different from that which they have developed seeing the police in action on the streets in their neighbourhoods.

The Police Gave the Youth a Break

The final type of positive experience for the young men was getting a break from a police officer. For some of the young men, getting a break included experiencing lower than normal levels of surveillance from the police, or not being searched during an encounter. For example, Nathaniel commented that "*I got pulled over and they didn't search me – that was good for me*" (Nathaniel, 21). Presumably, Nathaniel was used to getting searched by the police when he was stopped. For others, getting a break meant being let off by the police when they had done something wrong. For 3% of the young Black men in this sample, their most positive experience with the police involved benefiting from police discretion. In the two examples that follow, the young men talked of having broken the law, but being let off by the police:

> *Some girl stole my phone, I tracked her down and essentially assaulted her. It was all caught on tape and the police didn't arrest me because there was a warrant out on the girl* (Troy, 22).
>
> *When I got my hand cut with glass, a cop brought me to the hospital and didn't charge me. I punched through a window out of frustration* (Tommy, 21).

Getting a break for these young men also included the police turning a blind eye to an outstanding warrant, or a potential administrative charge for breach of probation or parole. As in

the case of Shane: *"[I] had a warrant for my arrest and the cops gave me a chance to deal with it rather than getting arrested at that time"* (Shane, 24). Shane, like the others who were spared administrative charges by the police, was fortunate. Violating the terms of one's probation or parole is an easy way to get caught up in the criminal justice system. As the previous section on negative experiences illustrates, not all of the youths felt that they had been so lucky.

Despite their negative views and frequent negative encounters, about one-third of the youth said they have had a positive experience with the police. Many of these positive experiences took place in the context of school or in some sort of program that a police officer was involved in. Other positive experiences came in the form of assistance provided by the police, either after a youth had been victimized or during some other circumstance. Kind gestures such as being provided with material goods, or being given a break by a police officer, were also viewed positively by the youth. Importantly, some youths acknowledged the role that they themselves played in influencing their encounters with the police. In some cases, being polite and respectful toward the police was thought to lead to a positive police experience. In the section below, I will explore whether positive and negative experiences with the police influenced the youths' views of police performance, their trust and confidence in the police, and their perceptions of police bias.

MULTIVARIATE ANALYSIS

Overall, the findings presented above indicate that this group of young Black men held very negative views of the police. The young men evaluated the performance of the police as poor and had little trust and confidence in the police. Furthermore, the young men perceived the police as biased and corrupt. The findings also illustrate the frequency with which the young men

encountered the police. The young men reported high rates of police stops and searches, and perceived the actions of the officers during these encounters as unfair and disrespectful. Frequent stops and searches and disrespectful treatment emerged as two of the four types of most negative police experiences that the youth recounted. In addition to their negative experiences, about one-third of the youth did report positive experiences with the police. The Toronto Police often use community outreach initiatives as a means of repairing the damage done by enforcement-focused policing such as gang sweeps and raids (Rogers and D'Aliesio, 2013; CBC – Metro Morning, 2013). In order to determine whether the youths' views were influenced by their positive and negative experiences with the police, or by other theoretically relevant variables, I conducted a series of multivariate analysis. The results of these analyses are presented below. The theoretical relevance of the variables included in the logistic regressions is discussed in Chapter Two. A full description of the dependent and independent variables is presented in Appendix D.

Police Performance, and Trust and Confidence in the Police

In the OLS regression equation presented in Table 4.13, a scale of police performance, trust, and confidence was regressed on a series of predictor variables. To create the Police Performance, Trust, and Confidence Index, ten[37] items on police performance, trust, and confidence were combined into a single measure (alpha=.88) Higher scores on this index indicate more positive evaluations of police performance and greater trust and confidence (for a full description of the dependent variables see Appendix D)[38].

[37] There are eleven items on police performance and trust and confidence in the police presented in Table 4.2. The first item "(1) innocent people are almost never arrested" was not included in the Police Performance, Trust, and Confidence Index because it did not scale well with the other items.

[38] An independent variable on police stops was originally utilized in this analysis. Because such a high proportion of the youth reported that they had been stopped by the police in the previous six months, the police stops variable was removed. Instead, the four types of negative police experiences (of which being stopped/searched/detained by the police is one) were each entered as independent variables into the equation.

Table 4.13. OLS Regression on Police Performance, Trust and Confidence Index

Predictor Variables	MODEL		
	B	Beta	Sig.
Age	-.022	-.009	.855
Age at Immigration	.148	.077	.083
Frequency of Marijuana use	-.577	-.226	.000
Self-identified former or current gang member	1.221	.080	.106
Family Crime Score	.022	.008	.869
Positive Attitudes to school and work	.136	.297	.000
Crime Victim	.049	.067	.175
Self-reported Crime and Delinquency	-.037	-.146	.014
Stopped/Searched/Detained	-1.877	-.113	.011
Verbal abuse/Disrespect/Harassment	-3.086	-.196	.000
Brutality - Excessive force	.235	.008	.848
False arrest/False evidence	-2.000	-.103	.018
Positive Police Experience	.025	.078	.068
Spent time in Custody	-2.471	-.161	.001
Constant	12.689	-----	.000
R Square		.443	
Adjusted R Square		.419	

Sample size=328

Several variables were found to have a negative relationship with perceptions of police performance, and trust and confidence in the police. Like Cox and Falkenberg (1987) and Brick et al. (2009), I find that self-reported delinquency is related to negative attitudes towards the police. For example, youths who used marijuana more frequently had lower levels of trust and confidence in the police, and evaluated police performance more negatively than those who did not use marijuana. Self-reported involvement in crime and delinquency and having spent time in custody both negatively influenced perceptions of police performance, and trust and confidence in the police. Furthermore, previous contact with the police appears to influence perceptions of police performance (Weitzer and Tuch, 2002). Several of the police experience variables were negatively related to evaluations of police performance and trust and confidence in the police. Indeed, experiencing verbal abuse, disrespect or harassment from the police is the strongest predictor of negative appraisals of police performance, and trust and confidence in the police.

Youths who reported that their most negative police experience involved being stopped, searched or detained by the police, and those who said their most negative experience involved being falsely arrested or having false evidence planted on them, evaluated police performance and trust and confidence in the police more negatively than those who did not report such experiences. Conversely, positive experiences with the police were only marginally related to positive attitudes towards the police, providing support for previous research indicating that negative police experiences have more of an impact on citizen attitudes towards the police than positive encounters (Weitzer and Tuch, 2006). Interestingly, the results also suggest a positive relationship between attitudes towards education and employment and perceptions of police performance, trust, and confidence in the police. Young men who had positive attitudes towards education and employment had more trust and confidence in the police, and evaluated the performance of the police more highly than those with negative attitudes towards education and employment. Below, I turn to the multivariate analysis of perceptions of police bias and corruption.

Police Bias and Corruption

As with the questions on police performance and trust and confidence in the police, I also wanted to examine whether there were any theoretically relevant variables that influenced the young men's perceptions of police bias and corruption; this analysis is presented below. The results of an OLS regression equation predicting perceptions of police bias and corruption are presented in Table 4.14. To create the Police Bias and Corruption Index, the eight items on police bias and corruption were added together (alpha=.79). Higher scores on this index indicate that respondents saw police as more biased and corrupt. This index was then regressed on a set of

predictor variables to determine whether they were related to the youths' perceptions of police bias and corruption.

Table 4.14 OLS Regression on Police Bias and Corruption Index

Predictor Variables	MODEL		
	B	**Beta**	**Sig.**
Age	.209	.128	.017
Age at Immigration	-.084	-.067	.170
Frequency of Marijuana use	.171	.103	.083
Self-identified former or current gang member	-.146	-.015	.786
Family Crime Score	.075	.039	.440
Positive Attitudes to school and work	-.061	-.205	.000
Crime Victim	.060	.127	.020
Self-reported Crime and Delinquency	.004	.025	.704
Stopped/Searched/Detained	.807	.075	.123
Verbal abuse/Disrespect/Harassment	2.549	.250	.000
Brutality - Excessive force	1.410	.078	.110
False arrest/False evidence	1.519	.120	.012
Positive Police Experience	-.004	-.020	.672
Spent time in Custody	.678	.068	.218
Constant	32.251	-----	.000
R Square		.325	
Adjusted R Square		.295	

Sample size=328

As the results indicate, age was positively related to perceptions of police bias and corruption; older youths were more likely to perceive bias and corruption than were younger youths. Being the victim of a crime also influenced perceptions of police bias and corruption – youth who had been victimized were more likely to perceive bias and corruption than those who had not. This is an interesting finding given that victimization was not related to the youths' perceptions of police performance and trust and confidence in the police. One possible explanation is that the youth felt they received inferior treatment as the victims of crime because of their race, age, social status, or area of residence, for example. Thus their views of police bias were shaped by their experiences as the victims of crime (see also Gabbidon et al, 2011). This

explanation would fit well with research findings indicating that Black people feel they are "over-policed and under-protected" (Jefferson, 2012).

Two forms of negative police experience emerged as significant predictors of perceptions of police bias and corruption. Similar to the results for police performance and trust and confidence, the experiencing of verbal abuse, disrespect and harassment emerged as the strongest predictor of perceptions of bias and corruption. Indeed, youth who reported that their most negative police experience involved being verbally abused, disrespected or harassed by the police perceived more bias than youth who did not. Youth who reported that their most negative experience was being falsely arrested or having evidence planted on them also perceived more bias and corruption than those who did not. Clearly, the negative police encounters – a typical occurrence for these young men – negatively influenced how they viewed the police. In contrast, those youth who had positive attitudes towards education and employment were less likely to perceive bias and corruption in policing. Unlike the findings presented in the previous chapter, being stopped, searched or detained by the police did not influence perceptions of bias amongst the sample of youth. Because this negative police experience did influence the youths' perceptions of police performance, this finding is unexpected. It is possible that because rates of stops and perceptions of bias were so uniform across the sample (see Tables 4.3 and 4.4), there is too little variation to distinguish the effects of this variable. This might also explain why self-reported delinquency did not influence perceptions of police bias, as almost all of the youths reported engaging in some form of delinquency in the six months leading up to their pre-test interview (see Table 4.1).

CONCLUSION

It should be clear from the data presented above that the young men in this study held rather unfavourable views of the police. Overall, the young men rated the performance of the police poorly, and held little trust and confidence in the institution. Furthermore, they viewed the police as both biased and corrupt. The findings with regard to police performance, trust and confidence, and bias/corruption align with previous research showing that Black youths' appraisals of the police are consistently less positive than those of Black adults (Hurst et al., 2000; Brunson and Miller, 2006; Sharp and Atherton, 2007). Indeed, the youths in this study held more negative views of the police than the Black adults profiled in Chapter Three. It is quite possible that the perceptions that the young men held are the result of extensive negative experiences with the police – including the multiple stops and searches that many of the young men felt constituted harassment. These repeated stops and searches were often characterized – at least from the youths' perspectives – by rude and disrespectful treatment that, at its worst, took the form of physical abuse. Again, these findings are consistent with previous Canadian, American and British research (James, 1998; Brunson and Miller, 2006; Sharp and Atherton, 2007). The feelings of harassment were drawn out in the qualitative findings in which the youth recounted their negative experiences. Approximately three-quarters of the young men provided an example of their most negative police experience. These negative experiences included police brutality, being stopped and searched, being verbally and physically abused, and being falsely arrested. Importantly, some of the young men acknowledged that their own hostile or negative demeanour can provoke the police. These young men recognized that the abuse they receive from the police can sometimes be avoided by being polite, which highlights the importance of citizen demeanour in shaping the outcome of police interactions (Engel et al., 2010). Being polite

likely becomes more difficult, however, when encounters are so frequent and when the police are actively trying to get a rise out of the young men.

It should be noted that while negative encounters comprised the majority of police experiences that the young men provided, some of the youth did report positive experiences with the police. Many of these positive experiences occurred in the context of educational or sports programs in which police officers participated. The young men looked fondly upon police officers who were helpful in providing them with assistance after a crime had occurred, officers who they felt were friendly and respectful, and officers who made a nice gesture to them (see also Brunson and Miller, 2006).

Available evidence suggests that positive interactions with the police tend to improve perceptions, while negative encounters have the opposite effect (Smith et al., 1991; Worral, 1999). Although findings are mixed (see Jacob 1971; Dean, 1980; Huang and Vaughn, 1996; Cheurprakobkit, 2000), Weitzer and Tuch (2006) suggest that negative or unpleasant experiences with the police tend to have a stronger effect on shaping perceptions than do positive ones (19). The results of the multivariate analysis support the latter point, indicating that the positive experiences of the young men had only a marginal influence on their evaluations of police performance and levels of trust and confidence in the police, and had no impact on their perceptions of police bias and corruption. Youth who reported that they have had a positive experience with the police were no more likely to hold favourable attitudes towards the police than youth who did not report positive experiences. Conversely, the multivariate findings indicate that negative police experiences did influence the youths' views of the police. Indeed, youths who reported that their most negative police experience involved being stopped, searched or detained, being verbally abused, disrespected or harassed, or being falsely arrested held less

favourable views of police performance and levels of trust and confidence in the police than youths who did not report these experiences. Likewise, youths who reported that their most negative police experience involved being verbally abused or being falsely arrested were more likely to perceive the police as biased and corrupt than youths without these experiences. These findings are important given the high number of youths in the sample that reported having these negative experiences. Available evidence also suggests that such treatment at the hands of the police in Toronto is not limited to the youths in this sample (Neugebauer-Visano, 1996; James, 1998; Rankin and Winsa, 2012).

Surprisingly, experiencing police brutality did not influence perceptions of police performance or perceptions of bias amongst youths in this sample. This finding is surprising because previous research suggests that knowledge of police brutality can influence perceptions of the police amongst racialized citizens (Weitzer, 2002). However, although police brutality/excessive force was the most commonly cited negative experience, it may actually not have been the youths' most frequent experience. Remember, the youths were asked for their most negative police experience, not their most frequent. Therefore, police stops and verbal abuse, for example, may have been more commonly experienced by the youths (see Tables 4.4, 4.5 and 4.6), and thus have had more influence on perceptions of the police than the more egregious yet less frequent experiences of police brutality or excessive force.

Finally, although the findings indicate that positive police experiences did not improve the youths' views of the police, positive views of other social institutions did. The multivariate analysis shows that youths that had positive views towards education and employment also held positive views of the police. This is an important finding given that we know young Black men face challenges both in the education sector and in the workforce (Henry and Tator, 2005). This

finding could be reflective of their position within our society, and their outlook on life more generally. Indeed, previous Canadian research indicates that young Black men experience discrimination in both the education and employment sectors, and that they are aware that such discrimination exists (Cladas et al, 2009; Codjoe, 2001; Swidinsky and Swidinsky 2002; Ruck and Wortley, 2002). Previous research has also shown that Black youth are more likely to grow up in conditions of poverty and to reside in social housing than are youth from other racial groups (Torczyner, 2003). Therefore, the young men's views towards the police may form just one part of a worldview influenced by the perception of living "socially unjust lives" (Khenti, 2013). The influence of the young men's outlook on life could have been more closely examined had other unmeasured variables, such as socialization and vicarious experience with the police, been included in the analysis.

The perceptions and experiences of this group of young Black men may have been expected given that they were recruited from a gang intervention and prevention program, and had relatively high levels of self-reported delinquency. Nevertheless, their views and experiences are important because they form part of a shared understanding of policing within Black communities that is transmitted through the vicarious experiences highlighted in Chapter Three (see also Brunson and Miller, 2006). In order to provide a countervailing perspective, we will now turn to a sample of Black male police officers to examine their views of the police and the policing of Toronto's Black communities.

Chapter Four Research Questions Addressed in Brief

1) **How did young Black men in Toronto's "priority neighbourhoods" view the Toronto police?**

   The young Black men held very unfavourable views of the police. In particular, the young men had very low levels of trust and confidence in the police and perceived high levels of police bias.

2) **How frequently did the young Black men encounter the police and what was the nature of their interactions?**

   Overall the young men had very high levels of contact with the police (both stops and searches). The majority of the young men did not feel that they were treated well during these frequent interactions. The young men described their experiences with the police as being overwhelmingly negative. As noted above, two-thirds of the youth felt that they were treated unfairly and with disrespect when they had dealt with the police in the previous six months. Substantially more youth reported having had a negative experience with the police (74.1% or n=243 youth) than a positive experience (31.1% or n=102 youth).

3) **Did the young Black men's experiences with the police influence their views of the institution?**

   Negative police experiences resulted in less favourable views of the police. Positive experiences with the police did not influence the youths' perceptions of the institution.

CHAPTER 5

Insider Perspectives on the Policing of Black Communities

At the time of this writing, a Black policeman in the Greater Toronto Area was brought before an internal disciplinary hearing after being charged with misconduct for failing to investigate racist threats directed at him by a member of the public (Edwards, 2013). The officer has subsequently sued his police department alleging racial discrimination, arguing that a white officer would not have been treated in such a manner by their own police service (Edwards, 2014) This story depicts quite clearly the troubles facing many Black police officers. Not only do they experience racism from members of the public and hostility from Black citizens, they are also confronted with particular challenges within the institutions they work for (Bolton and Feagin, 2004).

Although research is limited, available evidence suggests that the experiences of Black and other racial minority police officers in Canada have been unpleasant. In addition to the scholarly work reviewed in Chapter Two, there are several sources of information upon which to base this claim. For example, a Black Royal Canadian Mounted Police (RCMP) veteran chronicled the everyday racism that Black officers face in Canada's national police force in his book, entitled *You Had Better Be White by 6 A.M* (Smith, 2006). The title of Smith's book is taken from a directive given to a rookie RCMP officer by one of his superiors. Similarly, in 2002, following intense media coverage of police racial profiling in Toronto, four senior Black officers with the Toronto Police Service held focus group meetings with 38 racialized officers (34 Black and 4 South Asian). Their report highlighted the racism and racial profiling experienced by racialized officers at the hands of their peers and superiors. The report also highlighted the racism directed by Toronto police officers at members of Toronto's racialized

communities, and a perceived lack of leadership in tackling this controversial issue (see Tanovich, 2006). While a small body of Canadian research has examined the experiences of Black police officers, few Canadian studies have examined Black police officers' perspectives on the policing of Black communities (see Chapman- Nyaho, 2004; Satzewich and Shaffer, 2009; Ezeonu, 2010)

The aim of this chapter is to document and present "insider perspectives" on the policing of Black males in Toronto. This chapter will provide a third perspective on the policing of Black males, and serve as a point of comparison to the views of the adult civilian and youth populations presented earlier. While I recognize that the views of Black female officers may provide valuable insight into Black males' experiences with the police, I am focusing here only on Black male police officers. I have done so for three reasons: first, it has been established that Black males are the focus of much police attention, thus I want to examine their perspectives; second, from a practical standpoint, it would have been difficult to include Black female officers because they are so relatively few in number; third, doing so would have introduced an additional layer of complexity to the thesis and the need to examine the different experiences of men and women in policing to fully understand the views of Black female officers.

The chapter begins with a discussion of study methodology. Details about the subject recruitment process, sample characteristics, data collection and data analysis are provided. Next, quantitative and qualitative findings documenting the officers' perceptions of police bias and relations with Black communities are presented. The chapter then moves on to present qualitative findings exploring the officers' perspectives on the treatment of Black people. In this section, the officers provide their own accounts of their experiences as law enforcers. The officers also

discuss the reporting of police misconduct. In the final section, the officers provide suggestions for improving the relationship between the police and Black communities.

METHODOLOGY

As noted above, Black police officers occupy unique positions as members of both the Black community from which they are drawn, and the police service that employs them. They can therefore provide a perspective on the policing of Black males that differs from that of the general public.[39] Black officers are able to speak to what they see in their official capacities as law enforcers, and have the institutional knowledge and experience from which to judge the motives and actions of other officers who deal with members of the Black community on the street (Barlow and Hickman-Barlow, 2002; Bolton and Feagin, 2004). However, attempting to conduct research with Black policemen (or with any police officer, for that matter) without institutional approval is not an easy task. Aspects of the police culture, including a cynical worldview that fosters distrust of outsiders and a "code of silence," make it difficult to gain access to police officers as research subjects. Furthermore, there is said to be an affinity amongst police officers that creates a sense of loyalty and trust. Speaking to an outsider, particularly about sensitive issues, could therefore be viewed as a violation of the police subculture, and lead to questions about an individual officer's loyalty to the profession. This, in turn, could damage an officer's reputation and result in reprisals that could damage one's career (Librett, 2008). Most police services are also structured according to a paramilitary style chain of command, where

[39] One respondent, Ricky, sums this up quite well: "*As a Black person out of uniform; you're out in the community. It may be not a community that I police, but another community policed by other officers. You know, you're out there. You interact with these guys (Black people), whether playing basketball or not, so you see it from their point of view, and then you're back in a uniform; you're at your station and you sort of get those guys' point of view* [police officer's], *so you get a different perspective on things, and you sort of understand a lot better as to how both sides relate to each other.*"

directions come from the top down (Librett, 2008). The command structure makes it particularly difficult to talk to officers about their work without the approval of their superiors.

A failed attempt to survey racialized officers by the Commission on Systemic Racism in the Ontario Criminal Justice System in the early 1990s provides evidence of the challenges associated with conducting research of this nature. After the Toronto Police Association[40] learned that researchers from the Commission had sent questionnaires to racialized officers asking for their views on racial discrimination in policing, it demanded that any officer who had received a copy of the survey to report to Association headquarters. These officers were then asked to participate in a communal burning of the survey to demonstrate police solidarity. A headline subsequently ran in the *Toronto Sun* exclaiming, "Commission attempts to divide officers." Although some of the officers who received the survey made photocopies before joining in the communal burning, the Commission was unable to complete the research and ultimately no findings were published. As a result of such obstacles, some innovative approaches to recruitment were necessary to carry out the research presented in this chapter.

Recruitment

Institutional approval to conduct interviews from the police agencies where my respondents worked was not obtained prior to or during the course of this research project. There are several reasons for this. First of all, obtaining approval from police agencies to conduct research with their officers is often a lengthy and time-consuming process. This is exacerbated by the fact that there are five police agencies involved in this study, and each has its own approval process. Thus, the time it would have taken to receive official study approval would

[40] The Toronto Police Association is an organization that promotes and protects the interests of the uniformed and civilian members of the Toronto Police Service. See: http://www.tpa.ca/tpa/History.aspx.

have posed a significant challenge for a doctoral research project. Secondly, if permission was sought it could have been much more difficult to protect the identity of the research participants, thus jeopardizing their anonymity and possibly influencing what they would be willing to disclose. Third, the police services may have also wanted to nominate officers who would provide "approved" or institutionally sympathetic responses to the questions posed. In other words, the official approval process could have led to a sample of officers who felt pressured to portray the police in a positive light. Finally, there is the possibility that the police services in question would not have approved of the research project because of the controversial subject matter. Had this been the case, it would have been very difficult to conduct the study.

Because approval from the police agencies was not sought, the Black police officers included in this study were recruited through a mix of snowball and opportunity sampling (Bolton, 2003; Biernacki and Waldorf, 1981; Faugier and Sargeant, 1997).[41] I first approached Black male police officers I personally knew who worked within the GTA to request their participation in the research project. I also asked these officers to pass on details about myself and about the study to other Black officers within the GTA in the hopes of securing more participants. Once I had exhausted this approach, I utilized my personal network of contacts, asking friends and colleagues to recommend suitable research subjects. In this case my contacts either provided me with the names and coordinates of police officers who had agreed to participate in the research, or provided the officers with my contact details so that they could get in touch with me.

[41] Bolton (2003) also used snowball sampling to recruit Black police officers in his study of "continuing barriers in policing." His initial sample was also drawn from "known members" of Black police fraternal organizations.

My next approach was to request the help of the Association of Black Law Enforcers[42] in securing participants. I spoke with a number of long-standing members of the Association who, again, either provided me with contact details of people who had agreed to participate or provided my contact details to those they thought might be interested. I next turned to the internet as a means of identifying potential participants. I searched police websites and media outlets for stories about Black officers who had been involved in various initiatives, who had been promoted, or who had received awards for their service to the community or to their police agency. These officers were tracked down via email or telephone to request their participation. I also attended special functions such as awards ceremonies and retirement dinners that I knew would attract Black officers. At these functions I would approach officers (often identifiable by their ceremonial dress), tell them about the research I was doing, and ask them if they were willing to participate. These officers, some of whom did participate, also introduced me to other officers at the functions to whom I then relayed the same information. Finally, I also approached Black police officers I saw in uniform on the street working "paid-duty"[43] at construction sites, concerts, and professional sporting events. Again, I would approach the officers and give them my script and request their participation; this method proved to be quite useful. However, there was a fair amount of skepticism around the research. Some officers would not participate because their services explicitly forbade them from doing so. Others were skeptical about speaking to someone they did not know, especially because I am not an officer myself. Other

[42] "The Association of Black Law Enforcers (ABLE) is a non-profit organization formed in 1992 to "address the needs and concerns of Black and other racial minorities in law enforcement and the community" (ABLE, 2013).
[43]The following description of paid duty is provided by the York Regional Police: "A Paid Duty is a work assignment arranged through the York Regional Police, where an off-duty officer performs policing duties for an individual or organization other than the York Regional Police." https://paidduty.yrp.ca/Module/PaidDuty/en/Step/1

officers disagreed with the nature of the research, believing it to be unnecessary or controversial, and thus declined to participate.[44]

The Sample

The sample consists of 51 Black male police officers, active and retired, from five services that operate within the GTA: the Toronto Police Service; Peel Regional Police; York Regional Police; Durham Regional Police; and the Ontario Provincial Police (the OPP is responsible for policing the major highways within the GTA). Most of the respondents were active police officers at the time of the interview (88%), and over half were above the age of 45 (53%). The officers in the sample had a significant amount of policing experience, with over two-thirds (69%) having 15 or more years on the job. At the time of the interviews, just over half (53%) of the officers held the rank of police constable, about one-third (35%) were either sergeants or staff sergeants, and the remainder (12%) held the rank of inspector or higher. The officers also had a wide range of experience in terms of task and area assignments. Some of the officers held positions in elite squads (for example, the drug squad and the homicide squad), were assigned to posts in schools, or held important supervisory and management roles within their organizations. Other officers had spent the majority of their careers as beat officers and maintained a high level of contact with the general public. 42 (82%) of the officers were immigrants, mostly from the Caribbean and England. All but two of the officers indicated that they maintained strong ties to Black communities and Black organizations within the GTA. Because I was using a snowball/opportunity sampling technique, I do not know how many officers declined to

[44] I estimate that 12 of the officers were known to me, 22 were referred by my contacts, 4 were found on the internet and 11 were recruited on the street.

participate in the research.[45] I also do not know whether there were major differences between officers who would participate and those who would not. Therefore, I do not claim this to be a representative sample.[46]

The Interview

The interview protocol utilized in this research draws upon questions posed in several previous studies as well as new material designed specifically for this project. The interview is comprised of six sections, four of which are used in the present analysis. The first section (background information) expands upon the protocol utilized by Barlow and Hickman-Barlow (2002) in their study on Black officers' experiences with racial profiling. This section includes questions on demographic characteristics, country of origin, current rank and years of police service. The second section (perceptions of police bias) draws from and expands upon questions posed in the *2007 Perceptions and Experiences with the Justice System Survey (PEJSS)* utilized in Chapter Three. Questions in this section tap into the officer's perceptions of police bias and their views on research findings related to citizen perceptions of police bias (such as those presented in Chapter Three). The third section of the interview (police treatment of the Black community) was developed specifically for the purposes of this research project. In this section, respondents were asked a series of questions about the types of activities and behaviours they have witnessed officers engage in when dealing with Black people and Black communities. This section also includes questions about the reporting of police misconduct. In the fourth and final section (policy solutions), respondents were asked for their suggestions to improve Black males'

[45] I estimate that one-third of the officers I approached to participate in the research (either through email or on the street) agreed to participate in the research.
[46] Although a general description of the sample has been provided above, no further information about the officers is presented with the quotations throughout the chapter in order to protect their identity.

perceptions of and experiences with the police. The final section was also designed specifically for the present study (see Appendix E).

Data Collection

Data collection took place between September 2011 and August 2012. All of the interviews were conducted in person with me. As noted, the Toronto Police Service has an official policy prohibiting its members from being involved in research without approval of the chief. In order to avoid detection and any potential problems that might arise if the study were to be uncovered, I first interviewed officers from the other four services before turning my attention to officers working for the Toronto Police Service.

The interviews were conducted in a variety of locations including my office and other buildings on the University of Toronto campus, coffee shops and restaurants across the GTA, police stations and the homes of respondents. Some interviews were conducted in the officers' private vehicles. Most of the officers were comfortable and receptive to the research and reported that they were happy to be involved. A small number of officers, however, seemed more reluctant to participate in the study. Reasons for their reluctance included their own time constraints and apprehension about the possible internal repercussions for their involvement. As such, communication was kept to a minimum before and after the interviews, and interview locations were sometimes changed at the last minute. One officer in particular commented that he was hesitant to participate, but felt that he had an obligation to report his own negative experiences and those of other Black officers within his service. Needless to say, participation was voluntary and all respondents provided verbal consent before the start of the interview. The officers were also provided with an information sheet detailing the nature of study and the

possible consequences of their participation. Only one officer decided not to participate in the interview once we sat down to talk. While I was reading the purpose of the study to this officer, he became very emotional and stated that he had, in fact, faced numerous problems within his own service. Given the difficulty this officer appeared to have with the subject matter, I decided not to proceed with the interview.

Data Analysis

Once data collection was complete, the voice-recorded interviews were sent to out to a professional for transcription[47]. Upon receipt of the transcribed interviews, the author subsequently verified their accuracy by listening to the original voice-recordings and comparing them to the written transcripts. Any changes that needed to be made to the transcripts were done at this point. This process also served as data familiarization, and an initial list of keywords and themes was developed. Next, the interview transcripts were imported into NVIVO 8 qualitative research software for coding. First, the answers to each question were given a label reflective of that question. For example, the responses to question "A1" from each of the 51 interviews were coded "A1" so that they could be retrieved simultaneously using the software.[48]

Next, the data was coded based on the content of the response to each of the questions. If the question was closed-ended, yes/no/sometimes for instance, the responses were coded according to one of the three possible answers. If the question was open-ended, the responses were coded according to the content of the answer. During this phase of the coding, additional labels were given to chunks of text that were reflective of ideas, themes or keywords that stood

[47] 32 of the 51 officers (63%) agreed to be voice recorded. These interviews were sent to the transcriber. The remaining 19 interviews were completed on a laptop computer and did not need to be transcribed.
[48] This process, known as "topic coding," could have been performed using the auto-code function in NVIVO had all the documents been in the same format. The documents were in different formats because some were voice recorded and then transcribed, while others were completed on a laptop.

out to me (some of which had already been developed during the data familiarization stage). As a result, the data was organized in a series of "tree nodes" (in a hierarchical structure) that reflected the responses to the interview questions. This stage of coding also produced a series of "free nodes" that reflected the additional ideas, themes and keywords that had been developed. Once the first round of coding was complete, the initial codes were compared for internal and external consistency.

A second round of coding was subsequently performed on the data. This stage focused on populating the "free nodes" with data that had been missed in the first round of coding. For example, a code may have been developed toward the end of the initial stage of coding. The second round was performed to ensure material that was coded prior to the identification of this code would not be overlooked. Once the second round of coding was complete, the codes were again checked for consistency, and brought together under general themes and categories that had been identified throughout the process. For example, an over-arching theme that emerged from the data was "Young Black Men." All of the different codes that related to Young Black Men (i.e. "clothing," "demeanor," "stereotypes") were brought together under this more general heading. Once the data had been organized and categorized into broader themes, they were read against one another to begin to understand how the themes and concepts related to each another. The responses given to the open and closed-ended questions, along with the main themes that emerged from the data analysis, are presented in the findings section below.

FINDINGS

Perceptions of Police Bias

In line with extant literature (e.g. Brunson, 2007; Weitzer and Tuch, 2006), the data presented in chapters three and four illustrate that Black men in Toronto hold negative views of the police, developed largely through personal and vicarious police contacts. Likewise, previous American research has shown that Black police officers also believe the police to be biased against Black citizens and communities. As such, I wanted to examine how Black police officers view police treatment of Black people in the Greater Toronto area. The following tables present the findings related to the officer's perceptions of police bias against Black people within the GTA. First, respondents were asked, "In general, do you think the police treat Black people the same as white people?" As Table 5.1 indicates, 61% of the officers felt that the police treat Black people differently from white people.

Table 5.1: Percent of Respondents who Feel the Police Treat Black People the Same as White People

Do the Police Treat Black People the Same as White People?	
No	61%
Sometimes	22%
Yes	18%[49]
N=51	

Those officers who indicated that they felt the police treat Black people differently (n=42) were asked a follow up question about the nature of this differential treatment. Specifically, officers were asked: "Do you think they treat Black people MUCH better, BETTER, WORSE, or MUCH

[49] Totals may not add up to 100% due to rounding.

worse, than they treat white people?" As indicated in Table 5.2, none of the officers who believe that Black people are treated differently by the police stated that the police treat Black people better than white people. To the contrary, almost eight out of every ten officers (80%) felt that the police treat Black people "worse" or "much worse" than they treat white people.

Table 5.2: Percent of Respondents who Believe the Police Treat Black People Worse Than White People

How are Blacks treated differently?	
Depends	21%
Worse	64%
Much Worse	15%
N=42	

Next, the officers who stated that the police treat Black people differently from white people were asked: "How often do you think they treat Black people differently than White people?" As indicated in Table 5.3, just over half of the officers felt that Black people are treated differently either "half the time" or "often."

Table 5.3: Percent of Respondents who Feel the Police Treat Black People Differently, by Frequency

How often do the police treat Black people differently?	
Often	29%
Half the Time	24%
Depends	19%
Once in a While	26%
Almost Never	2%
N=42	

The next question, posed to all participants, asked about racial differences in police use of force. Specifically, the officers were asked "In general, do you think the police are more likely to use

physical force on Black people, on white people, or do you think there is no difference?" Responses to this question (Table 5.4) were split almost in half; 47% of the officers felt there is no difference, while 51% felt that the police are more likely to use force on a Black person than a white person.

Table 5.4: Percent of Respondents who Believe the Police are More Likely to Use Physical Force on Black People than White People

Police Use of Force	
No Difference	47%
On Black People	51%
On White People	2%
N=51	

Although this was intended to be a closed-ended question, several officers felt the need to qualify their answers and were given the opportunity to do so. Of those officers who said there is no difference in police use of force, some believed that the use of force is situational. As Allen[50] stated: *"I'd probably say there's no difference because you're dealing with a situation and the reaction to that."* Another officer commented that it is fear that drives the use of force, rather than skin colour:

> *I don't think so because when the stress factors kick in you don't really see ... the race, the colour all that, the gender, goes away. It's neutral. All that your brain reads is the danger that you confront and, you know, it might be different in some other areas; but in* [geographical location removed], *from what I've been exposed to, no, I don't ... there's no difference...* (Stanley).

While Stanley felt that an officer's level of fear is not influenced by a citizen's race, others disagreed. Of those respondents who believed that the police are more likely to use force on a Black person, fear of the Black male and the perception that he is a threat was identified as an

[50] The names of study participants have been changed to protect their privacy. Details about officer characteristics, such as age and years of service, have also been withheld to protect officer identity.

important factor influencing police use of force. As Craig responded: *"Absolutely on Black people, and especially Black males ... Police are afraid of a Black male, absolutely."*

Some officers felt that the police are not only more likely to use force on a Black person than a white person, they also believed that fear caused force to be used more quickly against Blacks. As Martin noted:

> *I would say there might be a tendency to use it on Black people or you'd see the levels of force escalate quicker because I believe there's almost like a threat factor ... A person of colour is more aggressive or he's more strong, so I think it's a situation where some of the officers are fearing people of colour and are almost forced to escalate their use of force options at a quicker rate* (Martin).

In addition to strength and aggressive behaviour, other stereotypes about Black males were also said to influence the use of force. Tony commented on the idea that Black people are thought to be carrying guns: *"They are more likely to use force on Blacks because of the gun situation. They* [the police] *are always assuming that Blacks carry guns, and sometimes they're right."* As Tony noted, this stereotype has some basis in reality. For example, Black men are over-represented as victims and offenders in gun homicides in Toronto (Khenti, 2013). Whether or not Black men are actually more likely than members of other racial groups to carry guns remains unknown.

Next, respondents were asked about the most serious form of police use of force – police shootings. Specifically, respondents were asked: "In your opinion, are Black people more likely to be unfairly or wrongly shot by the police than white people?" The responses to this question are presented in Table 4.5. A number of officers were unsure about whether there are racial differences in the likelihood of a citizen being shot by the police. Indeed, one-fifth of the officers (20%) stated that they "don't know" in response to the question. Again, the officers' perceptions about whether a Black person was more likely to be unfairly shot by the police than a white

person were almost evenly split between those who did feel a Black person is more likely to be unfairly shot (41%), and those who stated there is no difference (39%).

Table 5.5: Percent of Respondents who Feel that Black People are More Likely to be Unfairly Shot by the Police than White People

Police Shoot	
Black Person	41%
Don't know	20%
No Difference	39%
White Person	2%
N=51	

Once again, respondents who wanted the opportunity to explain their answers were given the opportunity to do so. Some of the officers who believed there are no racial differences in the likelihood of being shot by the police stated that perceptions to the contrary are based on a historical perspective, reflective of a time when Blacks were more likely to be shot by the police than white people, as Barry states:

> *No, not today. There was a time when I, myself, as a police officer was concerned with some of the stuff I'd see going on in metro. You know, I was concerned about that even as a lawman.*

Presumably, this officer is referring to the series of police shootings involving Black men that occurred during the 1970s and 1980s, sparking community mobilization and the establishment of organizations such as the Black Action Defence Committee in the GTA (Campbell, 1992). Other officers were of the opinion that the police do not want to shoot anyone, and that the police service weapon is used as a means of last resort. Officers with this view also stated that being shot by the police is driven by circumstances other than the race of a suspect, much like the general use of force question presented above.

Some of the officers who believed a Black person is more likely to be shot than a white person mentioned that their views on the situation are influenced by what they see in the media rather than anything they have experienced or personally witnessed themselves. As was the case with police use of force question above, respondents who believed that a Black person is more likely to be shot by the police attributed this to a fear of the Black male, and the perception of him as threatening. Similarly, officers mentioned the types of crimes that Black people engage in (relating to drugs, for example), and their involvement in gun violence as contributing to their increased likelihood of being shot by the police.

Perceptions and Experiences of Black Citizens

Next, the respondents were asked the first in a series of open-ended questions about Black people's views of and experiences with the police. First, respondents we asked to comment on research findings indicating that Black people are more likely than members of other racial groups to believe the police are racially biased. Specifically, respondents were asked: "Research from Canada and other Western nations has consistently shown that black people, and black males in particular, are more likely to believe the police are racially biased or discriminatory than the members of other racial groups. In your professional opinion, are these views at all justified?" Only 10% of the respondents disagreed with the view that the police are biased against Black people. However, these few officers argued that crime, disorder, and the actions of Black people are to blame for any unequal treatment that does exist. In other words, members of the Black community (or at least certain segments of the Black community) are disproportionately involved in crime, and it is this increased involvement in crime – not racial bias – that results in higher levels of police contact, for them and for law abiding Black citizens.

Table 5.6: Percent of Respondents Who Feel that Perceptions of Police Bias Held by Black People are Justified

C6 Black Perceptions of Bias	
Justified No	10%
Justified Yes	90%
N=48	

Few respondents stated that the perception of police bias is inaccurate or misinformed. These officers believed that perceptions of bias within the Black community have arisen because Black people are hostile with the police, and are quick to become defensive during police encounters. Blacks' hostility towards the police emerged as an important theme in explaining the respondents' experiences with law enforcement, as will be discussed at length below.

While some officers did not feel that Black people's negative perceptions of the police are valid, the majority of the officers (90%) believed that Black people are justified in holding the view that the police are racially biased. Many respondents based this opinion on things that they had seen and heard in their capacity as police officers. As Stanley explains:

> *Because I would say that I know that I've seen traffic stops that were simply based because the driver is Black. You need to have reason for stopping people ... I would say if there were two groups of people walking – one was a group of white, and one was Black – the white will not be treated the same as the Black ...* (Stanley).

Stanley's perceptions of police bias appear to have been informed by his experiences as a law enforcer. In addition to things that they had seen on the job, the officers also recounted their own personal experiences with the police when they were out of uniform as confirmation of the view that the police are racially biased. Russell stated:

> *They are to an extent because even now I'm still getting pulled over at times, right, and as soon as I show my badge the whole attitude just changes, right. So, yeah, I can definitely see that, yeah* (Russell).

Like Russell, several of the officers stated that they themselves have been treated poorly by the police during interactions when they were out of uniform or working in plain clothes, including having guns drawn on them in situations where they felt such actions were unwarranted. Based on what they had seen, heard, and experienced, almost all of these officers believed the views of Black civilians are valid, and many used their own experiences to support their assertions.

In explaining the perceptions of the Black community and the way in which Blacks are treated by the police, the officers again made reference to negative stereotypes that the police hold about Black males. In providing his response to this question, Victor remarked:

> *They're justified because I know that a lot of officers, regardless of where they work in the GTA, have a perception that young Black males just by virtue of being young ... more likely to participate in criminal behaviour, and I know that they get that from social media* (Victor).

Even though the majority of officers felt that the Black community is justified in believing that the police are racially biased, many who held this view were quick to caution that not all of the blame can be placed on the police. Many of those who stated that the police are racially biased also made reference to crime in Black communities, and the hostility that Black people direct towards the police. The respondents argued that elevated levels of crime involving certain segments of the Black population result in Black people having more contact with the police, thus increasing the perception that the police are targeting Black people. Furthermore, some officers stated that the negative demeanor that some Black people display when dealing with the police elicits negative responses from the police, and results in a poor encounter that Black people attribute to being Black.

In a related question, the officers were asked to comment on research findings indicating that Black people are more likely than members of other racial groups to say that they have had a negative experience with the police. Specifically, respondents were asked: "Research from Canada and other Western nations has consistently shown that Black people, and Black males in particular, are more likely to report having negative experiences with the police than are members of other racial groups. In your professional opinion, are these views true?" Again, very few officers disagreed with these research findings. Few believed that a Black person is no more likely than a white person to have a negative police encounter. Two of the officers, for example, felt that things have changed; that Black people at one time were more likely to have negative experiences with the police, but that this is no longer the case. For example, Randall states: *"[A]gain, you know, years and years ago I would say absolutely, but now I have some ... I actually have some questions about that ..."* (Randall).

Table 5.7: Percent of Respondents who Feel that Black People's Claims About Negative Police Treatment are Justified.

C7 Blacks Negative Experiences	
Justified No	6%
Justified Yes	94%
N=51	

Another officer disagreed with these findings because he believed that Black people have negative experiences with the police as a result of their involvement in criminal activity.

The vast majority of respondents (94%), however, did feel that Black people are more likely to have negative experiences with the police. Again, some of these officers' views are based on things that they have seen and heard in their capacity as police officers and as private citizens. Some of the officers felt that Black people have more contact with the police, and thus

there are more opportunities for negative encounters to take place. There were two reasons given to explain why Black people have more contact with the police: racial bias on the part of the police, and the over-involvement of Black people in criminal activity. In line with the racial profiling literature (Harris, 1999), some of the officers who pointed to discrimination on the part of the police argued that Black people are subject to greater levels of police surveillance than are their white counterparts, as Jeremy explains:

> *Yes, I think their feelings – the Black male community – are somewhat justified in feeling like they may be held to a different level of accountability for where they are, their location; and quite often, you know, that random police stop ... I think they may be subjected to a greater level of scrutiny during those random stops than perhaps maybe a white counterpart of the same age, same demographic, socioeconomic background, etc.* (Jeremy).

This sentiment was echoed by several officers who felt the same way, and who argued that a Black youth is much more likely to draw the attention of the police than a white youth. The respondents again argued that the stereotypical beliefs about Black men held by police officers contribute to the greater scrutiny that Black people receive from the police, which in turn increases police contact and the opportunity for negative encounters.

Police demeanor was also raised as a factor contributing to Blacks' negative experiences with the police. Manuel provides an example:

> *... There are police officers that are confrontational types of individuals. It goes back to what I was saying – personality. It's nothing to do whether they're a police or not. That's who they are. They're confrontational type of people ... and they're probably the ones that have the most complaints against them, right, and that goes back to the fact that we interact more with Blacks. They're going to get a lot of complaints* (Manuel).

Manuel did not argue that all officers treat Black people in a disparaging manner, but rather that there are some officers who interact with all members of the public this way. Because Black people have proportionally more interactions with the police, Manuel and other officers argued

that there are more opportunities for Blacks to encounter these officers, and thus there is a greater chance that a negative encounter will occur. These responses provide an interesting take on the "bad apples" theory – that it is not all officers who are rude or discriminatory, but rather a few bad apples (Tator and Henry, 2006). Police executives will often counter allegations of systemic discrimination by pointing to the behaviour of just a few officers (bad apples) (Tator and Henry, 2006). In this case, the presence of bad apples on the police force combined with increased police interactions for Black people result in more negative police interactions for Black people.

The officers noted, however, that it is not just the police who can be hostile, but that some members of the Black community display attitude when dealing with the police, which elicits a negative response from officers. The hostility that Black people may display when dealing with the police was attributed by the officers to those individuals' previous personal and vicarious experiences with the police. Other officers were clear to point out that some Black people are rude or disrespectful when dealing with the police. For instance, one officer provided an example from the day of his interview. Earlier in the day he had a door slammed in his face by the mother of a young Black man on whom he was conducting a bail compliance check. The officer felt that there was no good reason for the mother's conduct, other than that she was simply being rude.

In addition to being rude, respondents believed that Black people were quick to claim that they were only being stopped because of the colour of their skin, and that Black people will interpret disrespectful treatment as racial discrimination which in turn angers police officers. Finally, respondents pointed to cultural differences between some Black people and the officers they encountered as fuel for negative interactions. Included in this line of explanation was the belief that Black people, particularly those from the Caribbean, are generally louder and more

boisterous, and that this is interpreted as anger by some officers who then feel they have to assert their authority to take control of the situation. One officer pointed to different cultural norms and the different ways in which respect and disrespect are understood as producing conflict between Black people and the police. As Troy explained:

> *When you got some guys who basically never grew up around certain cultures – let's just call it what it is – and your culture allows you to do certain things or say certain things, and the Black culture doesn't call for those things. They're already at a disadvantage. For example, I can tell you right now, you walk into a Black man's house and tell him what to do in front of his family, you might as well just, you know, get ETF there. You know, get your Emergency Task ... whatever, because you're in for a fight. You know ... from my experience ... again, working with different guys who have never really been around, as you say, the Black culture ... you know, give them a little crash course on ... "Don't be doing that because, you know, like you're going to put us in a situation"* (Troy).

Troy made reference to the fact that some officers who are tasked with policing Black communities have had little personal contact with or exposure to Black people outside of their professional capacities, and thus do not understand certain cultural nuances. The social and physical distance between Black people and the police has been identified in American research as a factor contributing to police mistreatment of Black citizens/communities (Bolton and Feagin, 2004). A lack of understanding can, of course, go both ways.

Respondents were clear to explain that the negative encounters that Black people have with the police are the product of forces on both sides:

> *It is true that it is more likely that Black males would have the negative encounters. A good portion would be fuelled by the youth ... In the same breath, the police push these kids, they feel that they have a one-dimensional way to deal with these kids. Based on past experiences* (Travis).

As Travis explained, some Black people are initially hostile when approached by a police officer who may be expecting to be disrespected themselves. When the officers' beliefs are confirmed, and a negative demeanor is displayed by a Black person, the officer responds with his own

hostility, resulting in a negative interaction. The cumulative experiences of both the citizen and the officer (combined, no doubt, with the officers prerogative to maintain authority) result in negative encounters. While this certainly does not happen in every instance, this line of reasoning does help explain how many negative encounters transpire – the negative encounters are a product of mutual disdain.[51]

Do Black Citizens Play the "Race Card"?

I next asked respondents whether they believed Black people play the "race card" in order to get out of trouble. Specifically, I said: "Some people, the police in particular, argue that some Black people will sometimes complain about racism or being treated unfairly by the police even when they have been treated in a fair and just manner. Do you think there is any truth to this argument?" Very few (8%) of the officers disagreed with this statement. Of those officers who either do not think that Black people would play the "race card" or believe that it is a rare occurrence, a lack of respect from both parties was mentioned as influencing their perspective. That is, the officers believed that if a Black person encountered a rude police officer, then they may believe the officers' decision to stop them was motivated by race. Conversely, if the officer is polite, the individual is less likely to attribute their treatment to their racial background.

Two-thirds of the officers, however, felt that Black people often blame their encounters with the police on racism rather than on their own behaviours. Furthermore, vicarious experience with the police was also raised as a factor contributing to Blacks' belief that the police stop them just because of their race. Some officers felt that Black people are quick to play the race card because they have heard stories about police bias from family members or friends, or have seen

[51] I use the term mutual disdain to describe the preconceived notions that both the police and Black people have about each other that influence the nature and outcome of their interactions.

stories about police discrimination in the media. Other officers believed that Black people would use their race as an excuse in an attempt to get themselves out of trouble. As Leonard explained: "*[O]h yeah, it's played all the time ... A lot of times people use it just to get out of situations.*" Some of the officers who have personally experienced this said they would question Black people who made an appeal to race, particularly when the individual expected the officer to give them a break based solely on their mutual Blackness. Suspiciousness of the police was also viewed as a reason why Black people attribute their encounters with the police to race. As noted above, many of the respondents believed that Black people are suspicious of the police, and assume that their encounters with the police are motivated by the colour of their skin. Thus, the lived experience of race/racism influences how Black people perceive the actions of the police.

Experiences with racism in other sectors of society and awareness about the existence of widespread racial discrimination also prompt Black people to attribute police actions to racism:

> *Yeah, there is merit in saying that, but I'd like to add a little "but" in there. There's merit in saying that and it's 100 percent true, but I think that it's true because we spend ... "we" as those who are racialized spend more time living with that racial component than white people, right? You know, we don't have the same autonomy, and I think that because I live as a Black man – I don't just live as a man – that it's on the forefront of my mind and maybe those who see me. So, yes, it's true we do play the race card but, you know what, we live with racism. They don't live with racism so I guess that's why they don't play the race card* (Victor).

The insight of this officer provides an important point for consideration, as he argued that Black people respond to the police knowing that their race may have influenced the officer's decision to initiate an encounter. If a Black citizen believes that a police officer is racist they may articulate this to the officer or question their authority. Subsequently, the officer may respond negatively to the accusation of racism or the challenge to their authority. Any harsh or rude

treatment, in turn, could reinforce the individual's original belief that the police are racist. It becomes a vicious circle.

Black People's Treatment of the Police

In the next question, I asked the officers "In general, do you think Black people treat the police differently than white people? For example, in your opinion, do Black people respect police authority to the same extent as white people?" Responses to this question were varied. However, two-thirds of the respondents did not feel that Black and white people treat the police in the same way. A few officers stated that the way in which members of the public treat the police is a product of individual experiences rather than race. Whether Black or white, if a person has had previous negative contact with the police they will engage the police differently than someone with past experiences that have been positive. Importantly, one respondent pointed out that a single police officer can change a citizen's views of all police, as Jeff explained:

> *Also, once again, if there is a difference in treatment it's probably based on previous encounters, right. So having said that, they may have had a negative experience, and then going forward they paint all officers with the same brush, right?*

Of those officers who believed there is no difference in how Black and white people treat the police, a reference to history was again made. One officer stated that at one point in time, Black people might have treated the police differently than whites, but that this is no longer the case. Another officer commented that Black people may be more hesitant when initially approached by the police, but once they receive fair and respectful treatment from an officer, they give it back in return. An exception to this may be young Black men, as the following quote exemplifies: *"The big difference, I believe, is that when ... say, a young Black man will not back down. I guess ... I don't know what it is or not, but we don't back down easy"* (Nathan). The

impact of age in influencing how Black people treat the police was also mentioned by a number of the officers who felt that Black people treat the police differently than white people. The general opinion of officers who perceive differential treatment is that Black people are more reserved, more suspicious and less trusting of the police than white people. Again, these feelings were attributed to the history of negative relations between the police and Black communities. Officers noted that these sentiments do not necessarily translate into Black people being hostile with the police, but rather that they may be less willing to engage with the police, or appear to be less responsive during interactions. Nevertheless, a lack of willingness to engage on the part of a Black citizen may also be read negatively by a police officer whose judgment of the citizen's demeanour may also be influenced by racial bias (Engel, 2003; Engel, Klahm and Tillyer, 2010).

However, a large number of officers did state that Black people are more hostile and abrasive when dealing with the police. One officer put it quite succinctly: *"Yes, Blacks don't trust us. They are hostile in the initial interaction. There is justification for that. Because of past experience, because they believe you will not be fair with them"* (Randy). As Randy noted, and as has been mentioned above, the way in which Black people interact with police is based on their previous experiences and the treatment they expect to receive from the police.

Previous experience with the police in other countries, and cultural differences between some members of Toronto's Black communities and the police, was also raised as a factor influencing how the police are treated. For example, Ricky described how immigrants might import their views of the police from their country of origin:

> *Yeah, I think that's a cultural thing again too. You find that people coming from ... I'm going to relate to Jamaica. Police in the community are not so friendly there. So coming from that environment to this, you're still going to have your guard up towards police because it's just a cultural thing, and it's the same with ... you take probably Chinese; their views of the police in China – they bring those views here. It's not a, you know, good relationship.*

While this officer put forth an interesting and valid point, his argument runs counter to recent research showing that new immigrants have amongst the most positive views of the police in Toronto, and that their views deteriorate with more time spent in the country (Wortley and Owusu-Bempah, 2009). Finally, some officers credited a lack of understanding of the role of the police with influencing the way Black people treat the police. These officers argued that white people generally understand the function of the police and utilize them for appropriate purposes, whereas some Black people do not understand the role that the police play in our society. Black people may question things the police do during an encounter, or might not understand when it is appropriate to request the service of the police.

Officers' Feelings About Blacks' Perceptions of the Police

Next, I asked the officers to comment on how they felt about the negative perceptions of the police that are held amongst a large proportion of Black Torontonians. Specifically, officers were asked: "How do you personally feel about Blacks' perceptions of the police?" All of the officers who were interviewed stated that they were aware of the negative perceptions of the police and, as discussed above, most thought that these negative perceptions were justified. A number of the officers said that they are troubled by the negative perceptions either because they reflect reality and are a product of Black people's negative personal and vicarious experiences with the police, or conversely because they are blown out of proportion and are inaccurate. The officers expressed a desire for the public – particularly Black people – to see things from their perspective, to understand the realities of policing some of the GTA's most dangerous neighbourhoods, and to understand the split-second decision making that officers often have to

exercise. Particularly interesting is the sentiment that Black officers are fighting two battles, as Philip explained:

> *Well, you know what, it's unfortunate because, you know, it's one of those things ... I don't think Black folks really understand what Black police officers have to deal with. You know, we have to deal with them on their issues, right, on their level ... So you have to deal with those kind of issues, and you have to deal with them like politically. You have to deal with them in a diplomatic way, right; and then on the other hand you're getting squeezed from inside, right, so you have to deal with the internal part of stuff with those kind of equity issues internally, right, so you're caught between a rock and a hard place all the time ... You know, like I've had people say to me, "You know, you think you're better than me because you're a cop," and, you know, I'm like, "what are you talking about, buddy? Do you have any idea what my life is like?*

This quote gets to what Alex (1969) described as "double marginality." Not only do Black officers have to deal with the myriad issues facing Black communities, and the hostility they receive from the Black people they police, but they also have to confront racism, discrimination and inequality within their own police services. For the officers, the negative perceptions of the police held by Black citizens add additional challenges to an already challenging work environment. Nevertheless, the police remain sympathetic to the views and experiences of Black citizens.

Changes in Officers' Perceptions of the Police

In the final question in this series, I asked the respondents: "Do you think your own perceptions of the police and of police bias changed after you became a police officer?" There were only two officers who said that their views remained unchanged, noting that they were aware of the nature of policing and of the strained relationship between the Black community and the police before joining the force. One of these officers stated that this troubled relationship was actually the reason he decided to become a police officer himself. Other respondents (18%) stated that their

perceptions of the police changed for the better after they became a police officer, and that they now believe there is less discrimination within policing than they did prior to getting on the job. These officers said that seeing things from the inside helped to change their perspective, and they believe that they now have a better understanding of the nature of policing. For example, Leroy stated:

> *Yeah it did. Before becoming a police officer, I never knew why they* [the police] *did certain things. So my perception was always, because it's me. After becoming a police officer and seeing that it's not me, it's the situation and in similar situations, they act similarly, regardless of who that person is. With officers, it is always about officer safety. It is always about going home at the end of the day. So if they perceive a situation to be threatening to their personal safety, then they would react to that, regardless of who the person is.*

Leroy argued that police action is driven by officer safety and perceived threat level, rather than who the individual is. While this may be true, the implicit bias literature has shown that police officers (and citizens alike) associate Blackness with crime (Eberhardt et al., 2004). Furthermore, as violent crime is concentrated in areas with larger Black populations, officers may be more likely to perceive interactions with Black citizens in Black neighbourhoods as threatening and dangerous, and thus behave accordingly. Indeed, several of the respondents stated that they now perceive less bias because they are more aware of the level of crime within the Black communities, as Manuel explained:

> *You know, I see the other side now. I have a better understanding of, you know, how things work because, like I said before, I probably had the same mindset. Despite my personal experience I still thought, you know, they probably do stop Black guys just for no reason more often than not; but being on the other side now seeing it, realizing the frequency that our people are committing crimes, you know, it's kind of hard to cry wolf when we're the one doing the crime in most cases in my personal experience.*

Some respondents also said that their perceptions of the police and police bias have changed along with changes in society as a whole. These officers believed that there is now less racism in

our society than there was in the past, and that racial discrimination by the police has decreased along with this overall change.

On the other hand, over one-third of respondents (35%) reported that they now believe there is more bias within policing than they did before they joined the police force. As Jeffrey explained, his experiences as an officer have led him to lose respect for his profession:

> *You know what; I think my perception before I became a police officer was actually better than it is now. I actually had a lot of respect for the police. I had a lot of respect for the profession, but as for being on the inside and seeing how it operates ... I'm just talking of one police service because I haven't worked for any other police service than the one I work for. It is bad ...*

A lack of understanding of different people and different cultures was credited by another officer with changing his views for the worse. He argued that there are officers who do not have diverse groups of friends or relations, and so they have little personal contact with and understanding of different races and cultures, which influences the way they police. Whether or not there is less racism in Canadian society raises an interesting question. Many scholars agree that the nature of racism has changed from overt to more covert in nature (Walker, 2001). How this has impacted policing is also important to consider. While Toronto's Black communities appear less concerned about police shootings involving unarmed citizens, concerns still center around many of the same issues as they did forty years ago – frequent, unwarranted stops and rude, disrespectful treatment (Lewis, 1989; Winsa, 2013).

In addition to genuine ignorance on the part of some officers, there were other respondents who said their views of police bias were changed by their exposure to officers who were outright racists or bigots, as Shawn succinctly remarked: *"Absolutely. Tons of red necks."* While the term "red neck" may be seen as derogatory, Shawn's assertions challenge the notion that racial discrimination in policing is the result of a few bad apples. Likewise, officers stated

that things they had seen other officers do, and the so-called "questionable policing practices" they had witnessed, changed their perceptions of the police:

> *Yeah. Well, I was one of those, what I would call "good Blacks," who respected the police and believed in all that they did and supported a hundred percent. But over the years, I would say certainly within the last five years, that view has changed. I am a lot more questioning of some of the practices that I have seen officers use and the approach that they take. Yeah, the last five years* (Curtis).

As might be expected, many (63%) of the officers' views of the police changed once they were exposed to the profession, the challenges of policing, and the internal workings of their respective police agencies. As the comments above indicate, the perceptions of these officers have been influenced by their experiences on the job. In the next section, the experiences of these officers will be explored in more detail.

Police Treatment of Black People and Black Communities

Witnessed Racial Profiling

In the next section of the interview, I asked respondents a series of questions about the police treatment of Black people and Black communities. As racial profiling[52] has emerged as a point of public concern, I first asked the officers: "In your professional opinion, have you ever witnessed racial profiling activities by officers from your police service?" Of those officers who claimed not to have witnessed racial profiling (31%), several stated that other officers have told them about racial profiling occurring within their service. For example, Victor stated:

> *That's a tough one. I don't think that I've actually witnessed it. Have I heard stories? Have I had people confide in that? Absolutely. That's easy. Yeah, I have*

[52] The following definition of racial profiling is utilized in this research: "racial profiling in policing is defined as any situation in which race rather than criminal behaviour is used by a police officer or a police agency to determine the potential criminality of an individual" (Barlow and Hickman Barlow, 2002).

> *... Black and white. I've had officers of all colours come to me, and probably because I'm probably one of the more trusted people in my organization.*

Just like vicarious experiences with racial profiling are shared among Black citizens as evidenced in Chapter Three, so too are these stories shared amongst police officers. Importantly, white officers appear to share these stories with their Black colleagues as well; their motivations for doing so, however, remain unknown.

Two-thirds of the officers reported that they have seen members of their service engage in racial profiling activities, and while some officers simply stated that they had seen racial profiling take place, others provided details and context about the events. The police focusing their surveillance activities on Black men after the report of a crime, for example, emerged as one form of racial profiling. As Bobby explains:

> *One time [I] came to a scene with my team and they were targeting Black men and treating them poorly, so I pulled my guys out. It's shocking when you see a kid that looks like he could be your own being jacked up because there has been a robbery and we are stopping all Black kids.*

The targeting of Black people, specifically young Black men, was problematic for a number of respondents. As noted throughout this thesis, the police disproportionately target young Black men for investigative purposes. As Bobby noted, no young Black man could escape suspicions as the police were stopping "*all Black kids.*" In addition to the likely unwelcome stops experienced by those who are innocent, Bobby's quote is also telling in that he mentioned that the police were treating these kids "*poorly.*" It is exactly these frequent, unwarranted, and disrespectful encounters that foster negative views of the police among Black people, and result in the criminalization of the entire group.

Rodney also referenced Black youth when recounting an example of racial profiling by a fellow officer:

> *Yeah, I had an issue once ... So, I was driving with an officer and every Black person he saw – 'that kid is an asshole' and 'that kid is an asshole; that kid is an asshole,' and I finally said, 'Well, how do you know they're not a Staff Sergeant's son,' and then I became Black before I was police officer because I had the nerve to say something, right?*

In this instance, the officer in question was referring to all Black people as "assholes,"[53] and as will be discussed at length below, the police often refer to criminals as "assholes." Thus, it could be interpreted that the officer was remarking that all of the Black youths he saw and referred to as "assholes" were criminals in his eyes.

The participants also discussed the manner in which the police respond when they are looking for or have detained a Black suspect. As discussed above, many of the officers in this study felt that the police are often fearful of Black men, and that this fear influences the way the police respond to Black people. One response to this fear is sending large numbers of police officers to deal with an incident involving a Black person, as Jeremy explained:

> *I have intervened with patrol officers because there was a car of four Black males, young males, stopped, and there were like 18 cruisers surrounding this vehicle, and they are all going, 'why,' and I'm the only Black member of my platoon at the time, and I was supervisor and so I said, 'Look, the perception'... and I told them ... I said, 'The perception' ... 'Oh well ... you know, these guys are known for this,' and I said, 'Do your investigation, but you don't need 18 people ... 18 cruisers here to do it.' And I sent a bunch away, and then afterwards, you know, for whatever reason, there was a percentage of my platoon that ... felt that I was wrong to make that decision.*

The officer quoted above mentioned several important themes that have arisen in this research. Firstly, the police response to Black people as a product of fear. In this case, the response was to send more police to the scene than the Black supervisor thought was necessary. Secondly, similar to two earlier examples, Jeremy's account depicted the treatment of young Black men. Jeremy and the other officers felt that the increased police attention that the Black youths received was

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[53] Another example was provided by Luis: *"They would just refer to Blacks as 'niggers' when giving descriptions. White guys were called assholes, Black guys were niggers"* (Luis). See also Van Maanen (1978), Waldeck (1999).

problematic. Evidently, young Black men elicit fear on the part of police, who respond in great numbers with a tough, enforcement-style of policing. Finally, Jeremy also mentioned his own Blackness in recounting an example of racial profiling, like Rodney – suggesting that his own actions are judged in light of the colour of his skin. Rodney and Jeremy's experiences again highlight some of the problems facing Black police officers – the fact that they feel that they cannot be judged strictly on their actions, but also based on the colour of their skin. These experiences provide another perspective on how race plays out in the context of policing – not only does race influence how a member of the public is treated by the police, but also how a racialized officer is treated or viewed by his peers in dealing with situations involving Black citizens.

The Use of Racist Language

I next asked the respondents whether they had heard racist language being used by police officers when talking to or about Black people. There was an almost unanimous consensus amongst the officers that racist language directed at a member of the public is unacceptable, that it is not tolerated by their police service, and is not something they have witnessed themselves (only one officer reported that he had witnessed a racial slur directed at a member of the public). Of the officers who reported that they have not heard racist language being used amongst groups of officers (directed not at a member of the public, but being used in conversation amongst officers), or at least not recently, several (33%) felt that it was something that still takes place when Black officers are not present. As Marvin notes, *"No, they won't let me hear that because, again, they'll be aware of me being Black, right."* Marvin gives the impression that racist language is still used by police officers, an assertion supported by many other participants (two-

thirds of the officers stated that they have heard racist language being used in conversation amongst officers). Don, for example, argued that officers who use racist language have become careful about whom they say certain things around: "*When I first started I had a sergeant call me a nigger. There are codes of conduct and sanctions now. But what it does is drive it underground.*" The idea that racist language has been driven underground by new policies was touched upon by a number of officers who stated that racist language is something that they might hear when they stumble upon conversations between white officers. Francis provided an example:

> *Yeah. In a group. I'll tell you a funny story. I pull up, you know when we meet, the two other cars, I'm in the third car. I don't know if the officers even heard or anything. This officer dropped the "n" bomb. He looks up and sees me and you see him going, his whole face going. Now, I didn't say anything cus I knew he knew I knew and I mean, four years later this guy's kissing my ass.*

The use of racist language by officers was attributed by some of the respondents to the nature of policing, and was referred to by one officer as "locker room talk." Eugene seemed not to find the use of such language offensive. When asked if he had heard racist language being used he responded: "*Yes, all the time. I attribute that to bravado, machismo. Needs to be put in context ... It's locker room talk*" (Eugene). What might seem promising is that the majority of the respondents believed that the use of racist language by police officers has decreased over time, from something that was once commonplace – especially amongst officers at police stations – to a relatively rare phenomenon.

The reduction in the use of racist language by police officers was attributed to both changing social norms around overt racism and to the introduction of anti-racism and human rights policies. It should be noted, however, that many of the respondents have been promoted above the rank of constable, and in their supervisory capacities would have an obligation to

report or sanction police officers that are caught using racist language. It is possible that these officers may not be exposed to racist language to the same extent as Black constables. In fact, a number of the officers stated that they stopped hearing racist language once they got promoted, and attributed this to their new supervisory positions. Perhaps if more police constables were included in the study, the presence of racist language would appear more prevalent. Furthermore, we should keep in mind what Don said above about racism being driven underground, and about the societal shift in racism from overt to covert (Pettigrew, 1979).

Officers Being Rude or Disrespectful

Next I asked the respondents about police officers being rude or disrespectful. Specifically, the officers were asked: "Have you witnessed police officers being rude or disrespectful towards black citizens? In your opinion, do you think the police are less respectful with black citizens compared to members of other racial groups?" The responses to this question were varied. Some officers (37%) reported that they had seen police officers being rude towards Black citizens and believed that the police were less respectful to Black citizens than members of other racial groups, while others felt that the police are less respectful with all non-whites and that disrespectful treatment is not reserved solely for Black people. Other officers (45%) felt that there are no racial differences, and that the police treat everybody with the same level of respect unless that individual has done something to deserve otherwise. Furthermore, age and social class, rather than race, were raised as important factors influencing how the police treat a member of the public. It was suggested that young people and those from lower-class backgrounds are more likely to be disrespected by the police because they are perceived to have less power or agency than older and wealthier citizens, and therefore have fewer avenues for

recourse. Young people were also thought to be more hostile towards the police, which, as noted above, may elicit negative responses from police officers.

It was also suggested that rude and disrespectful behaviour might be perpetuated by a small group of individual officers (bad apples), and that the practice of officers being rude to Black people in particular is uncommon. Similarly, some of the respondents felt that there are certain officers who simply have problems interacting with all members of the public, as Jeremy explains:

> *I think those officers who have less patience and who have a difficulty interacting with people, they tend to be the ones that lose patience sooner. It would be unfair to suggest that it's based on race. At this point I just think it's, you know, their ability to provide good customer service.*

Jeremy is careful to point out that it is not race that influences these officers' actions, but their poor interpersonal skills. However, as we have seen above, the actions of these officers may be interpreted as racism by Black citizens and undermine police-race relations, underscoring the importance of eliminating such behaviours. A change in the type of person now recruited into policing was also mentioned as a reason some of the officers have not witnessed rude or disrespectful behaviour from their peers. Some officers noted that police recruits today are more diverse, and better trained and educated than they were in the past – given the changing racial, ethnic, and religious make up of Canada, they are more likely to have exposure to people from different racial backgrounds. The officers felt that these factors have improved how more recent recruits interact with members of the public.

Finally, several respondents noted that police officers may overcompensate and be more respectful when interacting with Black people and other racialized citizens for fear of receiving a citizen complaint. As Francis explained:

> *... Officers now, we have this mentality that the public is right, all the time, we get kinda screwed. Public complain, we have to do more work. So, I believe officers are kind of like cautious. OK, I approach that Chinese guy, I approach the Indian person, I approach the female, I approach the Black person. They're kind of cautious that this could come right back on them.*

Just as the introduction of anti-racism and human-rights policies was credited with helping to reduce the use of racist language, the introduction and strengthening public complaints systems may have also led to positive changes because officers are afraid that they might receive a complaint from a member of the public who has interpreted their actions as racially charged.

The Use of Excessive Force and Police Brutality

In the previous section I asked the respondents if they felt the police are more likely to use force on a Black person than a white person. The majority of officers believed this to be the case; however, many admitted that their views were formed by what they have seen in the media rather than from personal experience. It is unsurprising then that when I asked whether they had seen excessive force or police brutality against a Black citizen, most of the officers said no. Specifically, I asked the respondents: "In your professional opinion, have you witnessed police brutality or excessive force against black citizens by members of your police service?" There was a general feeling amongst the officers that the use of force is context or circumstance-driven, and that cases of police brutality or excessive force are not motivated by race. There also appears to be a disjuncture between what these officers viewed as excessive force and brutality, and what members of the public might view as such behaviour. In responding to this question, several officers said that they had not seen excessive force or brutality, but when probed further admitted that they had seen officers use more physical force than was necessary in a given situation (excessive force). Some of the officers who did report having witnessed excessive force also

gave the impression that such force was deserved or justifiable based on the actions of the individual against whom it was used. For example, Francis proffered: *"Let me say this, I've seen Blacks and whites be physically, you know, held accountable by police."* In saying "being held accountable" Francis could be describing "street justice," or the police meting out a verbal or physical assault as a form of punishment to a member of the public who is thought to have done something illegal or offensive, and clearly takes place outside of official channels (Skyes, 1986). Craig provided another such example: *"So like I've seen where if someone is mouthy ... getting assaulted. I've seen that shit."* Just like the young men in the previous chapter, Craig said he has seen people getting assaulted by the police for talking back or getting "mouthy," supporting the assertion that citizen demeanour influences police action (see Engel, 2003).

There were also more egregious examples of police abuse provided by officers that would constitute police brutality, rather than excessive force as in the two examples provided above. Shawn had the following to say:

> *Funny story – the last time I saw it [police brutality] there was a Black guy in handcuffs, and [a] white guy came up to him and just ploughed him in the face – you know, right across the jaw – and I would've said something to that guy except he broke his hand. He got what he deserved.*

While Shawn found the fact that the officer in question broke his hand to be funny, a broken hand is a much lighter punishment than this officer would have received if he was held accountable to the full extent of the law. Furthermore, Shawn notes that he did not report the officer in question because he broke his hand, indicating that he might have done so otherwise, in clear violation of the "code of silence" that is important to police culture.

The respondents also noted that there is less "street justice" today than in years gone by, and that the prevalence of excessive force and police brutality, like racist language and disrespectful treatment, has decreased over time. Again, some of this decrease may be attributed

to changes in our society and what the public views as acceptable practice by a government agency (see Librett, 2008). The public monitoring of the police through the use of cell phone cameras and other electronic devices was also highlighted as a reason the police will not engage in brutality or excessive force. As mentioned by some of the officers, the police are now fearful of being caught on video and ending up on the evening news. It is also possible that the establishment of the Special Investigations Unit[54] in Ontario in 1990 may have also contributed to this reduction, if it is in fact the case.

On the Level of Service Provided to Black Citizens and Black Communities

Because Black communities have complained about the nature of policing in their neighbourhoods (Henry and Tator, 2005: 165), the next question asked about the level of service provided by the respondents' police agencies. Specifically, the officers were asked: "In your professional opinion, do Black citizens or predominantly Black neighbourhoods receive the same level of service by your police agency than other citizens/neighbourhoods?" One of the first things pointed out by the officers is that we do not have the same kind of racial segregation in Toronto that exists in some American cities, and while there may be certain areas with high concentrations of Black people, these areas are typically more racially diverse and their inhabitants more socially, economically and politically marginalized than in other areas of the city (socially disorganized). With that said, there were again a variety of responses given to this question. Just under half of the officers in the sample believed that Black citizens and neighbourhoods with high concentrations of Black residents receive the same level of service as

[54] The Special Investigations Unit (the "SIU" or the "Unit") conducts investigations of incidents involving the police that have resulted in death, serious injury, or allegations of sexual assault. The SIU is a civilian law enforcement agency independent of the police. While the Unit is an agency of the Ministry of the Attorney General, it maintains an arm's length relationship with the Government of Ontario in its operations. The SIU's investigations and decisions are also independent of the government. (Special Investigations Unit, 2013)

other citizens and neighbourhoods. They argued that the police are largely reactive and go where there are calls for service. Furthermore, some of these officers (14%) felt that socioeconomic status, in addition to race, influence the level of service that an individual or community receives. These officers believed that the police are quicker to respond in more affluent areas, and provide the residents with higher quality service, as Jeffery explained:

> *I think, generally speaking, Black people are less economically sound than, say, white communities, so I think that it comes down to ... it's a matter of race also and socioeconomic status. If the police go into a well established neighbourhood and it's a white [person] complaining, they'll go above and beyond. If it's someone in a black community, then they'll say it's a bad neighbourhood. They won't get the same [service].*

Likewise, Theodore remarked: "*A theft in a nice neighbourhood is tended to quicker than a bad area because of the stake that person has in the police service.*"

Other officers (22%) disagreed, arguing that Black people and neighbourhoods with high concentrations of Black residents receive an inferior level of service compared to other citizens and neighbourhoods. This inferior service, though, depends on the type of call. When asked whether Black people and Black neighbourhoods receive the same level of service as other people and neighbourhoods, Craig explained:

> *It depends on the nature of the call. If it's a shooting, I would say yes. If it's a street fight or an assault and there is no allegation of weapons, probably not. If it's something like domestic, I would say no.*

In line with arguments that socially disorganized, minority neighbourhoods experience "de-policing" (see Weitzer, 2010), Craig seemed to believe that unless a call in a Black neighbourhood is serious in nature, the police will not provide the same level of service as they would to other neighbourhoods.

The idea that Black people and Black neighbourhoods are "over-policed and under-protected" was also raised by officers who felt there is a difference in the level of service provided by the police. These officers argued that the police often stop Black people for investigative purposes. They also felt that there is a heavy police presence in areas with high concentrations of Black people, but that the police do not engage Black people and Black neighbourhoods in the same way as other citizens and neighbourhoods. The sentiments of these officers aligns well with previous research which has found that "the police approach to these (socially disorganized) neighbourhoods tends to be marked by unresponsiveness to calls from residents, poor service when they arrive at a call or a general under enforcement of the law" (Klinger, 1997 as cited in Weitzer, 2010). A lack of engagement on the part of Black people was also suggested by officers with this view as contributing to the lower levels of service that Black people and neighbourhoods receive. Several officers remarked that Black people are apprehensive to call the police when there has been a crime and to cooperate as witnesses, which has the effect of lowering the level of service that the police are able to provide to them. Finally, there was a group of officers (24%) who felt that Black citizens and neighbourhoods with high concentrations of Black people receive more service than other citizens and neighbourhoods. These officers argued that there are more calls for service and higher levels of crime in the neighbourhoods where large numbers of Black people reside and as a result there is a higher police presence. Thus, when Black people do call for service the police are often close by and able to respond rapidly, often in larger numbers. This situation does not exist in other – whiter – areas of the city.

This section of the chapter has documented the police treatment of Black citizens based on the experiences of the officers in the sample. Although their perspectives were varied, many

officers have witnessed the police mistreatment of Black people. In the next section, I examine their views on the reporting of police misconduct.

The Reporting of Police Misconduct

Given that a focus of this research has been on police racism and police abuse, the final two questions in this series focused on the reporting of police misconduct. First, I asked the officers: "If you witnessed police mistreatment or violence directed towards Black citizens would you report it to the appropriate person?" Although just under half (49%) of the officers insisted that they would report misconduct or violence directed at any citizen, there was a general uneasiness amongst respondents when it came to making a formal report about the behaviour of one of their colleagues. There were only two officers who said that they would take no action (formal or informal) if they were to witness another officer engage in violence or misconduct. One of these officers stated simply that, *"You cannot rat"* (Ray). The other officer said that there was no point in reporting misconduct because the police cannot be trusted and would not do what is right. Thus, he felt reporting was a waste of time. Similarly, there was a sentiment amongst a small group of officers that the actions of another officer would have to be egregious in order for them to make a formal complaint rather than dealing with the matter themselves. Slightly more than a quarter of the respondents (29%) indicated that dealing with instances of police violence and misconduct informally is a more acceptable practice amongst police officers. The informal route involves having a conversation with the officer in question about their behaviour, and possibly explaining to that officer why or how they had done something wrong. For example, two respondents said the following:

> *What I would do is I would first talk to the officer about it; and if that didn't work, I'll just go to a Sergeant who ... would probably have to talk to the officer, but I would first go to that individual* (Russell).
>
> *I prefer to deal with things individually. If I feel that after speaking with somebody a couple of times about something it doesn't get anywhere, then you have to go ... further* (Alan).

The respondents suggested that it is only fair to allow the offending officer to explain their behaviour before running to tell their superiors. Taking the informal route also leaves the door open for a formal complaint if not satisfied with the outcome of the initial conversation. However, it should be acknowledged that dealing with matters informally protects officers from the consequences of their actions, and could erode police legitimacy in the eyes of the public. This method also reinforces aspects of the police culture, such as solidarity amongst officers.

Officers who stated that they would report violence and misconduct to their service rather than dealing with the individual themselves were typically more experienced and more senior officers. These respondents explained that they now feel more secure in themselves and in their positions within their service, and would report behaviour now that they would not have earlier on in their careers. Bobby provided a good example: *"Yes. I have the foundation now so I can. I couldn't do it before. I am comfortable within myself."* Furthermore, many of the officers who had been promoted above the rank of constable explained that their police services have policies mandating that supervisors who witnesses misconduct, or are told about misconduct by another officer, have a duty to deal with the matter formally. However, several of the officers who had been promoted did say that they would deal with the matter themselves before taking the formal route, bringing the effectiveness of such policies into question.

In the next question I asked the respondents about reporting behaviour of their colleagues. Respondents were asked "In your opinion, if one of your fellow officers witnessed

racial profiling or police brutality against a minority citizen, do you think that they would report it to their superior officers or stay quiet about it?" About one-third (29%) of the officers believed that their peers would report such behaviour if they were to witness it. As has been mentioned previously, some of the respondents felt that the culture of policing has changed, particularly in the last five to ten years, and that reporting the misconduct of another officer is not as taboo as it once was. As Stanley noted: "*Oh yes, it has been a progressive change since I started. A lot of the things were never talked about.*" Reference to a "new breed of officer," was also once again made, with respondents suggesting that changes in the type of person recruited into policing has increased the likelihood that the reporting of misconduct will take place:

> *I do believe that and, like I say, because those that are joining the police service now ... have friends and family and have gone to school with them and are in clubs and are exposed to those type of people* [people from diverse backgrounds]. *It's not ... them and us anymore. It's like, "That was wrong. I don't care who it was. It was just wrong"* (Leonard).

The impact of increased training and new accountability measures was also put forth as reasons why these officers felt that their peers would report misconduct. Because of training and accountability measures, officers are more aware of the types of behaviours that constitute misconduct and more empowered to report it when they have witnessed it. Similar to reporting misconduct themselves, there were also a small number of officers who believed that their peers would be confident enough to deal with things informally and to have a conversation with a fellow officer whose behaviour they disagreed with. Whether they believed their peers would make a formal complaint or would go to the officer first, respondents were sure to highlight some of the negative consequences an officer might face for formally reporting misconduct and being deemed a "rat." These consequences are discussed at length below.

There was a group of respondents (37%) who believe that their peers would not report the misconduct of a fellow officer if they were to witness it. Interestingly, one respondent felt that many officers would not even recognize certain behaviour as misconduct, even if they were to witness it. Other officers believed their peers, especially younger officers, would not be comfortable enough to report the bad behaviour of their fellow officers. Martin explained:

> *I doubt it for the fact that in policing there's always young and inexperienced officers having contact with a community, and I believe it's a workplace where the less experienced officers are always going to be hesitant on reporting or going against the grain of the majority* (Martin).

Importantly, references to the "blue wall of silence" and the "thin blue line" were put forth as reasons that officers would not report the misconduct of their peers. The blue wall of silence refers to an unwritten rule within policing that officers do not tell on their colleagues, as Tony explained: *"The thin blue line, you know, they don't like to tell on each other."* Another officer went on to explain that policing is a club where officers look out for each other:

> *It's still a fraternity, it's still a club. And, I know coppers would say if you ever do that again I'll fry you. And coppers would say you're not going to cause me to lose my job, I'll report you. But I know that there's a scolding between peers* (Bernard).

Being labeled a "rat" or a "snitch" was another reason why some respondents did not think that their peers would report the misconduct of a fellow officer. Unfortunately if an officer witnesses something that they feel the need to report, there is no way that they can do so anonymously and they are therefore likely to experience some kind of repercussion for their actions. The code of silence, therefore, may make it difficult for police agencies to identify and discipline officers who engage in racist and corrupt behaviours.

Repercussions for Reporting Misconduct

In the section above the respondents provided a variety of reasons for why they and their colleagues would or would not report police misconduct. Whether or not the respondents said that they would report misconduct, there is a widespread awareness about the social and professional ramifications associated with reporting the behaviour of a fellow officer. As noted, policing is a cohesive profession in which officers look out for one another's interests. If an officer reports the misconduct of one of his peers he would disrupt the cohesion among officers and "rock the boat," so to speak. This is especially true in police departments with mandatory reporting policies for supervisors who are required to formally deal with matters brought to their attention As Manuel explained:

> *I've seen it happen, unfortunately, in my division where someone has gone through something that could've been handled. It carried on for two years. The case didn't go anywhere, and now all the parties that were involved are coming back, and now it's like this tension of what's going to happen when this person comes back and people got moved around the division ... if they had a choice of doing it differently, oh my god, they would've just talked to the individual and dealt with it ... because everyone knows, once you go to the supervisor their hands are tied. They got to report. That's what they're required to do, so deal with it as you may.*

Many officers were clear to point out that an officer who reports the misconduct of a colleague and violates the code of silence is likely to be labeled a rat or a snitch, and will face social consequences. Howard explained:

> *This is the problem and I've learned the hard way – the very, hard, hard way. You tell or you report; you will pay the price and you will pay dearly. You will instantly be ostracized – that you're an officer that cannot be trusted, an officer who is a rat ... and it's too dangerous to go after somebody head on.*

The repercussions of being labeled a rat are more serious than just social ostracization. Policing is a cohesive profession, partly because of the perceived dangerousness of the job, which fosters a mentality amongst police officers that they must protect one another (Kappeler et al., 1998). If

one officer steps out of line, is labeled a rat and becomes ostracized by their peers, his personal safety may be jeopardized as other officers may become reluctant to provide him with backup when needed, as Dale explained: *"Yeah, so at the lower levels where, you know, officers worry about whether or not they're going to get the backup, it's going to be on time and all that, it's a little more crucial there."*

In addition to their physical safety being put at risk by reporting misconduct, an officer's career may also be hindered if they tell on another officer. Because policing is a brotherhood, being a team player and someone other officers know they can count on is an asset and important professionally. If an officer is ostracized and labeled a rat they may be denied promotion or be blocked from access to the coveted elite squads and specialized teams. As Aaron explained: *"You'll pay for it one way or another – if it's promotion or if it's getting the shitty jobs ... That's how they do it, right; and they can't come out and say but everybody knows."* Similarly, Randy had the following to say when asked whether he felt one of his peers would report the misconduct of a fellow officer: *"I don't think so. I think it's a combination of the officers not caring and because it might have a serious impact on how you move up in the ranks."* If an officer reports the misconduct of one of their peers, it is still very likely that they will be identified as an individual who cannot be trusted, and will be punished by the collective through the denial of promotion and the assignment of less desirable jobs. Again, this practice protects officers who engage in police misconduct, while at the same time possibly benefiting officers who engage in these activities and those who keep quiet when they hear or see them. Indeed, if officers who "rat" are punished, it may be logical to assume that those who keep quiet will be rewarded through promotion or selection for elite squads, precisely because of the perception that they can be trusted. This may foster a climate of permissiveness, especially amongst these

tight-knit elite squads. Indeed, former members of the Toronto Police Services' drug squad were recently brought to trial on accusations that they assaulted, robbed and extorted known offenders (Small, 2012).

In this section of the interview, respondents recounted some of their own experiences as Black police officers, and provided details about the kinds of behaviours they have witnessed fellow officers engage in. While the majority of officers stated that they have witnessed a fellow officer engage in racial profiling, fewer respondents report witnessing racist language and fewer still have seen excessive force or police brutality directed at a Black citizen. When asked about the reporting of police misconduct, many of the respondents stated that they would report the misbehaviour of a fellow officer but there exists a high level of hesitation about doing so. The respondents were also skeptical about the likelihood that a fellow officer would report the misconduct of one of their colleagues. The preferred method of dealing with such problems is to have an informal talk with an offending officer rather than to make a formal complaint. The informal means of addressing misconduct stems from a great awareness of the social and professional ramifications associated with making a formal complaint about a fellow police officer. However, the high likelihood that police officers will deal with instances of police abuse and police racism in an informal manner poses a problem for police services trying to address these issues. If officers are not reporting the misconduct of their colleagues, then it becomes difficult for police agencies to identify and deal with problematic officers. As a result, these officers remain free to engage in misconduct and racist behaviour, which likely harms police-community relations and contributes to negative perceptions of the police. These could be reflective of cultural and institutional problems that exist within policing. In the next section, I

examine the respondents' suggestions for improving the relationship between Black communities and the police.

Suggested Solutions for Improving Relations

In the final section of the interview, I asked the respondents to put forth suggestions on how to improve relations between Black males and the police in the GTA. The officers suggested a variety of ways that the strained relationship could be improved, and as might be garnered from the data presented above, there was a strong emphasis put on encouraging and improving interactions between the two groups. Furthermore, while many officers felt the onus is on the police to improve interactions, officers did not negate the responsibility that Black people and Black communities have in improving the relationship.

Black Communities

The first suggestion put forth by the officers to Black communities was to be more cooperative and polite when dealing with police officers. As the findings above have highlighted, the respondents believed that Black people can be particularly hostile and confrontational when dealing with police officers, and this approach may lead to a negative response from officers and result in an overall poor interaction. Dale explained:

> *I think it's the approach, and just because you're pulled over doesn't mean you've done anything wrong, and it's that initial approach sometimes ... that aggressive initial approach, that causes each side to get their backs up, and then, you know, the interaction goes negative from there as opposed to saying, "Hey, officer, how are you doing today?"*

It is probably safe to say that very few people are pleased when they see the flashing lights of a police cruiser approaching them from behind. Nevertheless, as Dale noted, being stopped by the

police does not necessarily mean that the police officer intends to hand out a ticket or some other formal sanction. He felt that showing deference to an officer during an interaction rather than being hostile or rude would likely improve the outcome of that interaction for both parties, particularly the citizen.

Similarly, several respondents cautioned Black people not to immediately assume that their race is the motivating factor influencing an officer to initiate an encounter. A number of respondents believed that Black people play the "race card" in an attempt to get themselves out of trouble, or as an excuse when they have done something wrong. However, the respondents argued that doing so is likely to anger an officer who is initiating a legitimate encounter with a Black citizen.

> *Yeah, don't give them a hard time. Don't say, ' Oh, you're just stopping me because I'm Black' or 'Why are you stopping me'* [Don't] *be on the defensive because that kind of ... makes him upset, right, especially if it's a white officer stopping a Black person and he's not racist, right; and the guy says, 'Oh, you're stopping me because I'm Black, ' right?* (Aaron)

In addition to angering the officer, which can have a negative impact on the outcome of the encounter for that citizen, making an immediate appeal to race and racism – especially when that individual knows they have done something wrong – weakens the claims of those people who are the legitimate victims of police racism and discrimination. It is also very unfair to the officer – white, Black or otherwise – whose actions were not motivated by race. Furthermore, one officer explained that it is unlikely that a citizen will win an argument or a fight against a police officer on the street:

> *Yeah, on the street you won't win whether it's physical or whether it's verbal, confrontation or arguments ... Save it for court. That's where you do the fighting. Save it for court. Make lots of notes. Save it for court, you know, because ... police officers are trained to win on the street because ... it's drummed in their head from the time they get hired to the time they go to the police college to the time they come back from police college: 'If you lose on the*

> *street you're going to die.' So why would I lose on the street, you know, whether it's verbal or otherwise, I can't afford to lose. If I lose on the street, I won't come home to my family, so why are you going to fight with a police officer verbally or otherwise on the street, right?* (Phillip)

Phillip's statement gets at two key themes related to the policing of Black people and Black communities. First, is the perception of danger that motivates police action (Skolnick, 1966). As Phillip noted, police officers are trained to sense danger, and react accordingly. By entering into a disagreement, a Black citizen may heighten an officer's already heightened sense of danger. Second is the related need to control citizen encounters and to maintain authority when dealing with members of the public. By entering into a disagreement with the police, a citizen is challenging the officer's authority – again, this is likely to result in the escalation of the police officer's reaction, and perhaps prompt some sort of formal action or use of force.

Some officers suggested that abiding by the law and staying out of trouble is a way for Black people to improve their perceptions of and interactions with the police. As Tony proposed, *"I would say just walk the straight and narrow, and don't get themselves in trouble. Stay positive."* This response aligns with the findings presented earlier, where the officers attributed Blacks' negative perceptions of the police to their increased levels of offending. However, telling Black people to abide by the law is of course more easily said than done, and the officer presented no concrete suggestions. Such a response also disregards the fact that most Black people are not criminals, and negates the myriad social, political and structural factors that influence Black people's involvement in crime. In a sense, this response can also be viewed as a form of blaming the victim and a deflection strategy to take attention away from police bias (Henry and Tator, 2005). Nevertheless, a positive change in the mentality of Black people may improve their interactions with the police. Perhaps helping Black youth to question and

deconstruct the negative stereotypes that associate Blackness with crime may reduce offending rates, particularly amongst those who engage in crime as a form of defiance or resistance, thus reducing their chances of conflict with the law and their likelihood of encountering the police (see Alexander, 2012).

Finally, the respondents suggested that Black communities would benefit from becoming more aware of the role and the function of the police. As noted above, some respondents felt that Black citizens do not understand the role of the police, and are less able than white citizens to utilize them effectively. Officers talked about recent immigrants, and it was suggested that people who have recently arrived in Canada should be provided with information about what the police do and when they should be called for service.[55] Other officers suggested that this type of information should be provided to all Canadians and could be included in school curriculum – in a civics class, for example. Again, some people may find these suggestions simplistic, but many officers in the study felt that Black people are more hesitant to engage and cooperate with the police. While some of this hesitance and lack of cooperation may come from antipathy towards the police and a perceived lack of agency in dealing with law enforcement officials, we cannot dismiss the possibility that some members of the Black community do not know how to effectively utilize the services of the police. This may be especially true for citizens who view the police as an occupying army rather than a state entity intended to serve and protect.

Both Sides

Many officers acknowledged that improving relations between Black communities and the police that serve them is going to take effort from both sides. Sean, for instance, commented: "*I don't*

[55] The Toronto Police Service for example, has attempted to deal with these issues through its newcomer outreach programs and has produced a video intended for recent immigrants that explains both the role and function of the police, and the rights and responsibilities of Canadians. See http://www.torontopolice.on.ca/community/newcomer/.

know if one thing could solve all your problems and stuff like that, right, but you know what, I think it's the constant effort being put forth by both groups, right?" Sean is cognizant that improving relations will not be an easy task, as years of trying have made clear, but that innovative approaches and hard work may yield results. Part of this hard work would be to encourage more interaction between both parties. There are a number of officers that encouraged more interaction and communication between Black people and the police: "*Communication, even when it's confrontational, is better than no communication at all, so I don't see how that could hurt*" (Luis). Confrontational interactions at community forums to which the police have been invited are of concern to police officials, who do not particularly appreciate these forums being used as venting sessions by angry members of the public. Instilling or developing a sense of mutual respect from both parties was also put forth as a suggestion to help bridge the gap between Black people and the police. As Eugene articulated: *"Respect needs to develop from both sides ... One side is obligated to be respectful* [the police]. *Both sides need to meet in the middle."* Thus, action needs to come from both sides.

The Police

The respondents had more to say about how the police themselves could improve relations with the Black community than they had suggestions for members of the general public. Importantly, many officers felt that the police must recognize that the onus is on them to improve the relationship they have with Black communities. As Craig explained:

> *I really think that the onus is on the police, and in order to do that I think, first off, the police have to accept that the onus is on them because right now I don't think they accept that, you know. They think it's a shared onus, right, and I don't agree with that. Secondly ... there has to be an attitudinal change in that whenever you're working with the police – like this community policing and all of that – the police attitude is "we'll let you be present but you don't have much of a voice." You know,*

> *it's my way or the highway type of thing. They have to change that, so consultations with members of the public have to be meaningful consultations, whereas even if the police disagree sometimes they have to implement the suggestions made to them.*

Craig made an interesting point, but it cannot be said that no one within the policing world acknowledges the role that the police must take in fostering relations with the public they serve. An important aspect of the police taking responsibility is the acceptance from officers on the ground. Even if police at the management and supervisory levels do acknowledge that the onus is on them, this message must be relayed to and accepted by front line officers who actually interact with members of the Toronto's Black communities. Scholars have pointed out that, although police officers do view themselves as public servants, these attitudes tend to be minimized when it comes to the policing of Black communities (White and Saunders, 2012). Craig, it would seem, agrees.

Akin to their advice to Black communities, the respondents urged police officers to provide members of the public with better treatment and more professional service provision. As Jeremy argues:

> *I think one of the worst things we focus on – and it's not one of our core values in policing in general, and I can tell you particularly about my own service, is customer service – is that if we focus on providing good customer service and interactions with people on all levels regardless of the circumstances ... "You're being arrested. You know what, is there somebody that I can call for you" – all of those things that you would offer to anybody. The humanization of what we do – stop being so clinical with people or automatically assuming that because they made a mistake that they're rotten to the core, or that they're from a specific community that you have the right to speak to them in a certain way ... If we started to focus on that and that became even a core element in the Police Services Act, then we get back to what we're supposed to be doing ...*

Jeremy called for the humanization of policing, and makes reference to the Police Services Act that not only lays out the code of conduct for police officers in the province of Ontario, but also mandates cooperation between police services and the communities they serve. Jeremy's quote

also gets to the importance of the social ecology of policing and what has been dubbed "ecological contamination," whereby "mere residence in a particular community becomes a liability for all residents" (Weitzer, 2010: 121).

Some officers felt that the relationship between Black people and the police could be improved if police officers were better able to see things from the perspective of the person they were interacting with, as Allen explained:

> *... It goes back to the people piece, right? You have to deal with the people, so no matter what it is, what the issues are, you have to step out of your perspective and try and get onto the other side, right; and until you do, you're always coming up with reasons why.*

Perspective or the ability to see things from the position of another individual is not necessarily something that can be taught, and may be most relevant as a suggestion for police recruitment. Nevertheless, if officers are able to keep an open mind in situations and not to make assumptions about an individual's motives, as they have asked members of the Black community not to do, they will be better able to relate to the public.

Some of the respondents also made recommendations about police training measures that would help the police interact with the Black communities that they serve. Specifically, the need for training in anti-oppression and cross-cultural communication was made clear by several officers who did not feel that current training for officers was adequate in these areas. Anti-oppression training would help police officers become more aware of some of the factors that influence Black people's involvement in crime, and their contacts with the police. It would also help police officers understand things from the perspectives of the individuals that they encounter, as other officers have suggested a need for. Furthermore, an appreciation and understanding of some of the cultural nuances mentioned above that contribute to negative interactions could also be provided through training. Tony describes a component of training that

he himself was once involved in.

> *Well, this would have to come from the police department itself ... At one time we used to go to the police college on a regular basis and speak to police officers on cross-cultural communications, and try to sensitize them to the various cultures of Blacks and other groups, and it used to help, you know, because, for instance, people from the Caribbean ... it's different these days because of the different breed of people that we have now; but where I was brought up in Jamaica, it was a sign of disrespect ... if my mom should be talking to me and I'm staring her in the face like this, you know, I would get a backhand across the face; "Ah, boy, what are you trying to do? Are you trying to stare me down or something?" And that is construed as a sign of disrespect. So when Blacks come here from the islands. I think the same goes for the Native Indians too and for South Asians; and, you know, when they're being investigated by police officers, they tend to look away. They don't tend to stare them in the face, and sometimes the officers might say to them, you know, 'Look, you're so guilty you can't even look me in the eyes.' And we always have to tell these officers, "look, it's not that they're guilty of anything, but this is the way they were brought up."*

Tony provided specific examples of the types of behaviours that some people from different countries and different cultures exhibit, which police officers might interpret incorrectly. Making officers aware of these differences would help them to police in a more culturally sensitive and appropriate manner.

Helping police officers to become more aware of the immense power they hold over members of the public could also help reduce negative interactions. Alan provided an example of a role-playing exercise that could be conducted with officers at police training colleges:

> *One thing I think would really be good is an exercise in the balance of power, the shifting of power, so I proposed once before and it would never get past any police association. You bring in a couple of young Black youth to a police college, and you give a scenario so the Black youth are the police officers, and you got police officers that are in the crowd. Any one of them could be the potential suspect of whatever these two Black youth are investigating, so the youth then get to investigate the officers and search them if they see fit ...*

Alan went on to explain that police officers conduct so many stops and searches that they become desensitized to the intrusive nature of such encounters:

> *By the time you've been on* [the force] *for any length of time you've probably searched thousands of people. You forget how intrusive that is. Now if you're a young Black person ... if you're anybody – it doesn't matter what age or race – if you end up getting stopped twice a week and searched every time, that is very undignified, and you're doing it in public. You know, people are walking by that you know think you're a great kid or a great person and they see the cops ... like what does that do to the psyche of the person? Right, so something like that just to remind officers of what that would feel like I think would be powerful. I don't think you'd ever be able to get it passed through any service, but I think it would help.* (Alan)

Being aware of how a member of the public feels when he or she is being patted down and having their pockets emptied might influence officers to be more respectful as they investigate potential suspects. The proposed exercise could be useful, but as Alan notes, it could be difficult to get the approval of police services to run such a scenario.

Respondents made numerous references about the benefits of community policing for improving the relationship between the police and Black communities. Certain aspects of community policing, such as having more officers walk the beat in the neighbourhoods that they serve, were highlighted and viewed positively by respondents. Officers also proposed that police services and police officers become more involved in community events and participate in youth activities, such as coaching sports teams. A key aspect of developing good relations, respondents believed, is getting to kids while they are still young, before they have formed negative perceptions of the police. Therefore, school liaison officers were also viewed positively by many of the respondents. In addition to helping young people develop positive views of the police, school liaison officers and officers who coach youth sports were also seen as role models for young people who might otherwise not have access to such figures. Respondents also suggested that police services be involved in community symposiums and seminars to facilitate the type of open discussion that was previously highlighted as beneficial. The main message coming out of the proposal for more community policing and community engagement is the promotion of

communication and interaction between the police and the Black people that they serve.

Police recruitment and hiring was also put forth as a means of improving relations. First, officers believe that police services could do a better job of screening applicants to ensure they are allowing the right type of people to become police officers, as Jeremy explained:

> *I think it sometimes goes back to, "are we selecting the right type of people into the organization," and I'm talking personality-wise. We tend to attract people who are take-charge, very one-dimensional in terms of their problem solving ability. "Okay, this is what we're going to do; you're going to follow me," and quite often those people who lead cannot be led, and that's one of our problems.*

As mentioned before, policing has traditionally attracted individuals with authoritarian personalities, who were thought to be better able to command respect from the public and enforce the law. With the emergence of police professionalism, this line of thinking has changed and police services have for some time been recruiting individuals with a range of personality types (Forcese, 1992). Respondents also recommended that police services recruit more Black officers to help improve Black people's views of the police. Bernard explained:

> *Well I think that's a perception that will improve when those people that view the police as an occupying army and view the police as a suppressive group and a brutal group then they see their own going inside that group, they will follow, you see. I think a lot of that onus is on the police themselves.*

Bernard argues for the recruitment of more Black officers, and while some services within the GTA have taken it upon themselves to draw more Black officers into their ranks and to provide them with opportunities for advancement, others have not done such a good job.[56] However, it

[56] For example, Black officers are over-represented as sworn members in the York Regional Police Service. While only 2.2% of York residents self-identified as Black in the 2006 census, almost 4.5% of York Regional Police officers are Black (as of August 31, 2012) (York Regional Police Service, 2012; The Regional Municipality of York Community and Health Services Department, ND). On the other hand, Black officers are under-represented in both Durham and Toronto. The 2006 census reports that 6% of Durham residents are Black, while a 2010 survey of Durham Regional Police officers indicates that 2% of the service is Black (based on 63% response rate) (Durham Regional Police Service, 2011). Likewise, Black residents made up 8.4% of Toronto's population in 2006, but only 5.7% of sworn officers in the Toronto Police Service (as of 2012) (Toronto Police Service, 2012; Toronto Police

should be acknowledged that simply hiring more Black officers is unlikely to solve all of the problems facing Black communities and their relationship with the police (Skolnick, 2008). As Edward Conlon, (Former NYPD Detective and author) notes, "over time and in the main, cops tend to think like other cops, regardless of ethnicity" (quoted in Skolnick, 2008). Therefore, there is a need to change the way that police officers think and act, not just the colour of their skin.

Finally, the officers felt that there are changes that need to be made at a societal level if relations between Black people and the police are to be made better. Part of this change includes improving the life chances and future prospects of Black youth, as Troy explained:

> *Because you fail to provide the kids with adequate support and knowledge and information and outlets, resources, community groups, community outlets, programming and stuff, the police get the end result because these kids have no direction, you know; and what are we taught to do – we're taught to make sure people don't break the rules.*

In line with a critical race perspective, Troy, like many of his peers included in the study, was well aware of the social and structural problems facing Black youth that result in their coming into conflict with the law and with the police. It is these structural failures – in education and other social institutions – that put Black youth at increased risk of being involved in crime. If the myriad social and structural issues are dealt with, Black youth will be more successful in life and less likely to have negative encounters with the police; as Troy mentions, "*the police get the end result*." Troy seems to acknowledge that the police are a means of last resort in addressing behaviour caused by society's failures. While this argument holds some validity, it is important to consider the findings from Chapter Three, showing that even successful Black men receive more police attention than their white and Chinese counter parts. Therefore, addressing structural problems is just one goal; we must also change the way in which society views Black men.

Service; 2011; City of Toronto, ND). Neither the Ontario Provincial Police nor the Peel Regional Police were able to provide data on the representation of Black officers within their respective services.

CONCLUSION

The views and opinions of the officers in this study were informed by their unique positions as both Black men and as law enforcers. The officers were well aware of this duality as it not only informs their opinions, but also influences their experiences with both the police and the public they serve (see also Bolton and Feagin, 2004). These officers are forced to recognize and often deal first hand with the crime, violence and disorder that affect certain segments of Toronto's Black communities, while also facing hostility from Black citizens. At the same time, Black officers experience police racism themselves, in the discrimination they see being perpetrated against the public whilst on the job, and in their interactions with other police officers. Thus, Black policemen are in a unique and privileged position to comment on the policing of Black males in Toronto. Because the officers included in this study were recruited through a snowball sampling technique, I do not claim their views to be representative of all Black male police officers working within the GTA. However, given the variety of responses provided, I do believe the data presented above is representative of a range of opinion and illustrative of the problems that at least some Black officers in the GTA believe to exist.

The participants in this study supported the assertion that Black people in Toronto have more negative perceptions of and experiences with the police than do members of other racial groups. Similar to members of Toronto's Black communities (and to a large proportion of white and Chinese Torontonians, according to the survey results in Chapter Three), the vast majority of officers included in this study felt that biased policing exists. In line with the findings of previous American and British research on Black police (see Alex, 1969; Leinen, 1984; Holdaway and Baron, 1997: Bolton and Feagin, 2004), the officers felt that Black people's negative perceptions of the police are justified. Indeed, the officers in this study believed that Black people are treated

worse by the police, and that this differential treatment occurs relatively frequently. In fact, the officers were more likely to perceive police bias against Black people than were the Black adults profiled in Chapter Three, and the Black youths profiled in Chapter Four. Why the police officers perceived the most bias is an interesting question. It could be related to sampling, and reflective of the type of officers who agreed to participate in the study. The officers I interviewed may have been motivated to participate in the research precisely because they perceive high levels of police bias. Alternatively, the officers' perceptions of police bias could have been exaggerated by the nature of their work ,and the likelihood that they see the police arresting and dealing with Black people more often than regular citizens do. Finally, their views could be an accurate depiction of reality, and provide confirmation that the police in Toronto are biased against Black people.

Like some of the young men profiled in Chapter Four, many officers in this study were quick to point out that Black people play a role in producing their own negative experiences with the police. The officers argued that Blacks' increased involvement in crime leads to more contact with the police and more opportunity for negative interactions to take place (see also Ezeonu, 2010; Satzewich and Shaffir, 2009). The officers also argued that Black people's negative perceptions of the police develop through personal and vicarious experiences and cloud future interactions with the police, as suggested in the conclusion to Chapter Three (see also Engel et al., 2010; Wortley and Owusu-Bempah, 2011b). As a result, Black civilians often demonstrate a poor attitude or demeanour when dealing with the police. This poor demeanour is not appreciated by officers and often leads to harsher – or less respectful – treatment. In many cases, a mutual disdain for one another and a preconceived notion about how an encounter will unfold leads to a negative encounter for both the citizen and the police officer. Negative perceptions

about the other group are subsequently reinforced, and the cycle of distrust becomes further entrenched.

The different treatment that Black people experience often takes the form of over-policing, particularly where Black males are concerned. According to the officers, Black males are a frequent target of police stop-and-search practices. As in Bolton and Feagin's (2004) study of Black officers in the United States, the officers in this study reported that they have often witnessed such racial profiling in their official capacities as law enforcers. Furthermore, many reported that they themselves have experienced biased policing when working undercover or while off duty (see also Barlow and Hickman-Barlow, 2002). Differential treatment also takes the form of hostility and disrespect directed at Black citizens by police officers during these frequent encounters. Contrary to the testimonials of the youth documented in Chapter Four, the Black officers in this study did not feel that such disrespect would include the use of racist language. While the youth reported being on the receiving end of racist comments directed at them by police officers, the Black police respondents felt that such behaviour was unacceptable and that the use of racist language, although present within policing, was expressed only amongst colleagues. These conflicting opinions may result from the different positions that each group occupy. Indeed, some of the officers felt that they were shielded from the racist behaviour of fellow officers by the simple fact that they were Black. Others felt that their rank (being a supervisor or manager), and the requirement that they report the misconduct of their subordinates, meant that such activity would not take place in their presence. On the other hand, the Black youth would not benefit from the protection provided by internal police policies or the status privileges afforded to ranking officers.

The officers' views did align more closely with the testimonials of the young Black men with regard to physical abuse. Recall that over one-third of the young Black men profiled in Chapter Four reported that their most negative police experience involved Brutality or the excessive use of force. Many of the police respondents believed that a Black person is more likely to be the target of police use of force, and more likely to be unfairly or wrongly shot by the police than a white person. The officers' views with respect to police use of force involving Black people were almost identical to the Black men profiled in Chapter Three[57]. However, the officers did note that their views were largely informed by media depictions rather than their own personal experiences. Nevertheless, these findings highlight the salience of violence and physical abuse in Black males' perceptions of the police (see also, Bolton and Feagin, 2004; Brunson and Miller, 2006; Weitzer, 2010).

Overall, the officers believed that Black people and Black neighbourhoods receive a different level of service than other races and neighbourhoods. This different treatment is tied to the type of neighbourhoods in which large proportions of Black people reside. These neighbourhoods are typically more racially diverse and of lower socioeconomic status. In line with social disorganization theories, the officers suggested that the more economically depressed neighbourhoods in which some Black people reside have higher levels of crime, violence and disorder and therefore have a higher police presence and a tougher style of enforcement. The officers suggested that Black people and Black neighbourhoods are often over-policed while being under protected (see Weitzer, 2010). As a result of the over-policing and the hard line that officers take with the residents of disadvantaged neighbourhoods, abuse and misconduct is more commonplace (Weitzer, 2010). Unfortunately, given the close-knit nature of the policing

[57] 55.0% of Black men from the general population and 51.0% of the Black police officers believed the police are more likely to use physical force on a Black person than a white person.

profession, the reporting of misconduct by a colleague is not an easy task for police officers (Bolton and Feagin, 2004). In line with the views of the young men in the previous chapter, most respondents indicated that they would rather have an informal talk with an officer who had engaged in misconduct, rather than report their racist or corrupt behaviour to superiors. For the most part, officially reporting the behaviour of a colleague only happens when that behaviour is particularly egregious. Reasons for non-reporting include social ostracization and alienation, fear for personal safety, and concerns about the impact upon one's career.

Finally, the participating officers put forth a number of solutions to improve the relationship between Black people and the police. The officers suggested that Black citizens should be more cooperative and less suspicious of the police. Importantly, the officers advised Black citizens not to automatically assume that their race is the primary factor motivating an officer to initiate contact, and not to play the "race card" frivolously. The officers' acknowledgement that Black citizens play the race card is an interesting finding. While this acknowledgement could signal affinity to their police services and the police culture, given the officers' critical stance on policing elsewhere, it is likely an affirmation that some Black citizens use their racial background to get themselves out of trouble; something the respondents feel is detrimental to police relations with Black citizens (see Ford, 2009).

The officers also suggested that Black people develop a better understanding of the roles and responsibilities of the police and of their rights and responsibilities as citizens. Furthermore, the officers also suggested that both the police and Black communities must maintain open lines of communication and promote cooperation. Indeed, many of the principles of community policing were highlighted as a means of improving relations by these Black officers, as they have been by Black officers in other studies (see Leinen, 1984; Bolton and Feagin, 2004). Finally, the

officers suggested that the police must treat Black citizens and Black communities in a more humane manner. Better treatment, it is argued, can be fostered through better recruitment and training, and through the implementation of community policing principles. With that said, many officers acknowledged that the key to improving the relationship between the police and Black citizens is to improve the plight of Black people within our society (see also Ezeonu, 2010), a sentiment that fits well with the principles of critical race theory.

While many of the suggestions that the officers put forth are interesting, most are rather vague and take responsibility away from police agencies. The respondents largely neglected to put forth concrete solutions that could make an immediate impact and change the way police officers go about their day-to-day business. These solutions include the collection of race-based data that would identify areas of racial disparity that may exist due to police bias (see Wortley, 1999; Miller and Owusu-Bempah, 2011). The officers did not recommend tougher rules against racial profiling or other biased police decision-making. They did not call for tougher discipline for officers found guilty of racism and misconduct. Nor did they call for greater civilian oversight of the police. Arguably, the officers' views on police reform are influenced by the police culture in which they are immersed, and sympathetic to the institutions they work for. In the next chapter, I compare the views of these officers to that of the adult and youth populations presented in chapters three and four. The subsequent chapter also situates the results of this study within the extant literature and theoretical orientation presented in Chapter Two.

Chapter Five Research Questions Addressed in Brief

1) **Did the Black male police officers perceive racial bias in policing within the Greater Toronto Area?**

   Yes, in fact, the Black officers perceived more police bias against Black people than did either of the other samples of Black males.

2) **Based on their own experiences as law enforcers, how did the Black male police officers explain Black citizen's perceptions of and experiences with the police?**

   The officers believed that both the police and Black citizens contribute to negative police-citizen interactions. The officers also felt that these negative experiences contribute to the negative perceptions of the police that Blacks hold. The officers suggested the criminal behaviour on the part of Black people contributes to the frequency with which they encounter police, while the hostile demeanour that many Blacks display negatively influences their experience during these encounters. Likewise, the officers argued that bias on the part of police officers leads to increased police contacts for Blacks, and contributes to negative treatment on the part of the police.

3) **What suggestions did the Black male police officers put forth to improve relations between Black communities and the police?**

   Overall, the respondents recognized that improving relations between Black people and the police that serve them is going to take a concerted effort from both sides. The officers suggested that community policing strategies that promote dialogue between the two parties is crucial to improving police relations with Black communities.

CHAPTER 6
Discussion

> If ever I've felt two solitudes in life, it's the apparent chasm between the Metropolitan Toronto Police and many representatives of the Black community (Lewis, 1992).

Over twenty years has passed since Stephen Lewis made those ominous comments, and in spite of subsequent studies, reports, commissions and lawsuits, Mr. Lewis' observations seem as appropriate today as they did two decades ago. The police relationship with the Black community remains a highly contentious social issue in Toronto (Rankin and Winsa, 2013b). By examining the perceptions and experiences of three diverse groups of Black males, this study has yielded findings that are important with respect to furthering our understanding of the strained relationship between the police and racial minorities. As is well documented in the American literature (see Hagan and Albonetti, 1982; Weitzer and Tuch, 2006), I find perceptions of police bias to be particularly pronounced amongst Toronto's Black population. The findings herein also highlight the importance of both direct and vicarious police contact in the formation of these negative views. Like the young Black men documented in much of the American literature (see Brunson and Miller, 2006; Jones-Brown, 2007), I also find that marginalized Black youth in Toronto are treated as "symbolic assailants" and thus subject to high levels of police surveillance, interrogation, harassment, and abuse. This is a sentiment shared not only amongst young Black men, but also amongst many of the Black police officers whose accounts are documented in this thesis. With this in mind, the aim of this chapter is to integrate the quantitative and qualitative findings from the above three data chapters with the theoretical and empirical literature discussed at the beginning of the thesis. This concluding chapter thus begins

with a brief summary of the main findings from each of the three studies included in the thesis. An attempt is made to situate these findings within extant literature. Next, the chapter examines the common themes and contrasting perspectives exposed through the above exploration of Black male experiences and perceptions. The third section of this chapter highlights the strengths and weaknesses of the current research. Finally, the fourth and fifth sections of the chapter discuss the contemporary relevance of the findings, situating these findings within an international and historical context. Finally, the chapter concludes with a discussion of future research needs.

Summary of main findings

Chapter Three of this thesis examined differences in perceptions of and experiences with the police amongst a random sample of Black, white and Chinese adults from the Greater Toronto Area. In line with previous research (see Wortley et al;, 1997; Weitzer and Tuch, 2006; Bowling and Phillips, 2002), the findings from this chapter show that on the whole, Black Torontonians perceive more police bias and report more frequent and more hostile interactions with the police than do members of other racial groups. The findings also indicate that the frequency and perceived nature of these police interactions have a stronger negative impact on Blacks' perceptions of the police than it does for either white or Chinese respondents (see also Hagan et al., 2005). Indeed, repeated police contacts contribute to negative evaluations of police performance amongst Black respondents, while the same is not true for white or Chinese respondents. Finally, the findings of this chapter highlight the importance of shared or vicarious experiences with the police. Consistent with previous American research, the current study found that the negative police-related experiences of friends and family members negatively impacted

the respondents' own perceptions of the police (see also Rosenbaum et al., 2005; Gabbidon et al., 2011). Indeed, vicarious experiences with the police – not personal experiences – largely explain why Black females are just as negative about the police as Black males.

A number of explanations may account for why Black people in Toronto have more direct and vicarious negative experiences with the police and – as a result – perceive higher levels of injustice than the members of other racial groups. Firstly, the Black respondents tended to be younger, came from lower socio-economic backgrounds, and reported higher levels of criminal involvement than did either white or Chinese respondents. In line with social disorganization theory, Black respondents were also more likely to report living in neighbourhoods characterized by crime and disorder; areas in which levels of police surveillance – and perhaps abuse – are high (see Weitzer, 2010). If Blacks are more likely to be the recipients of both unwanted police attention and abuse – as the current findings suggest – it stands to reason that they will also evaluate police performance more negatively and perceive much higher levels of criminal injustice. Nonetheless, it is also important to note that Black people's negative perceptions of the police may also stem from the racism that they experience in other areas of their daily lives. As noted by Henry and Tator (2005), racism experienced within one social institution may be generalized to all social institutions – including the police. An equally plausible explanation stems from the conflict perspective (Blumer, 1958). Canada has a long history of institutionalized racism (Henry and Tator, 2005). Many Blacks may still be wary of powerful white establishments such as the police and, so, may believe that this institution exists to perpetuate their oppression, domination and subjugation (Henry, 1994). As Bayley and Mendelshon (1969: 195) note, Blacks view the police as a "visible sign of majority domination."

How do we account for the large attitudinal differences found in the present study between Black and Chinese respondents, given that both are racial minorities in Canada? One explanation may be found in Wortley's (1996) observation that Black and Chinese Canadians have experienced very different immigration patterns, and have arrived in Canada for different reasons (see also Weitzer, 2010 in the American context). Thus, different historical experiences in Canada may account for some of the attitudinal differences between the two groups. From a critical race perspective, we can also consider the process of differential racialization (Delgado & Stefancic, 2001). Black and Chinese Canadians suffer from very different racial stereotypes (Wortley, 1996). While Chinese people are often thought of as smart and hard working – a "model minority" – Black people, especially young Black males, are viewed as the "dangerous other," animalistic and violent (Taylor and Stern, 1997; Jiwani, 2002). These different stereotypes may influence the frequency and nature of police contacts for Black and Chinese respondents which – as a result – differently affect their perceptions of the institution.

How do we account for the lack of gender difference in perceptions of police bias held by Black men and women? As Chapter Three illustrated, Black women perceive slightly more bias in policing than do Black men. This finding is worth noting because, as in previous research (Lamberth, 1998; Harris, 1999; Bowling and Phillips, 2002; Wortley and Owusu-Bempah, 2011), the Black men in this study were much more likely to report being stopped by the police, and to report being stopped on multiple occasions. Black men were also more likely than other respondents to feel negatively about their treatment at the hands of the police. Indeed, Black men were most likely to feel that they were treated unfairly and with disrespect by the police. They were also more likely to report that they were "very upset" by their last police encounter. The fact that Black women perceived more police bias, despite experiencing fewer stops, may be

attributed to the nature of their own experiences with the police, as the victims of crime for example (see Gabbidon et al., 2011). However, the findings of this chapter also highlight the importance of vicarious experiences in shaping attitudes towards the police. Those respondents who had a negative vicarious experience with the police perceived more bias than those who did not. Therefore, as Black respondents (both men and women) were more likely than other respondent groups to report having vicarious experiences with the police, Black women's views of the police may be understood, at least in part, by their knowledge of the experiences of Black men (Gabbidon et al., 2011). As highlighted in previous research, the frequent and disrespectful treatment of Black men by the police may have a collective impact on Black people and contribute to a shared understanding of law enforcement agencies within Black communities (James, 1998; Weitzer, 2002; Brunson, 2007). These shared experiences must be fully understood in order to gain a better understanding of the conflicts between Black communities and the police (Feagin, 1991; Brunson and Miller, 2006).

As such, Chapter Four of the thesis focused on the perceptions and experiences of a group of young Black men from four of Toronto's most marginalized communities, the "symbolic assailants" who are disproportionately targeted by the police. The findings presented in this chapter showed that these young Black men rate the performance of the police very poorly, that they hold little trust and confidence in the police, and that they view the police as both biased and corrupt. As noted above, these findings are largely consistent with previous research, showing that Black youths' appraisals of the police are usually less positive than those of Black adults (Hurst et al., 2000; Brunson and Miller, 2006; Sharp and Atherton, 2007).[58]

[58] It should be acknowledged that the youth respondents are not a random sample of all Black youth in Toronto. Indeed, these are "high risk" Black youth who reside in some of Toronto's most socially disadvantaged, high crime neighbourhoods. Many of the young men also have extensive criminal histories. Their views, therefore, may not be reflective of other groups of Black youth, such as those from the middle and upper classes.

Indeed, the youth in this study held more negative views of the police than the Black adults profiled in Chapter Three (who are in turn less positive than members of other racial groups). The data suggest that the negative perceptions of the police that these young men held has developed as a result of numerous negative experiences with the police. The young men reported being subject to very high levels of police stop and searches. Many viewed such street encounters with the police as a blatant form of racism and harassment. They also reported that – at best – many of their encounters with the police involved rude and disrespectful treatment. At worst, these police encounters descended into physical and psychological abuse.

The majority of the young men involved in this research provided an example of their most negative police experiences. These negative experiences included police brutality and excessive force, being repeatedly stopped and searched, verbal and physical abuse, and being falsely arrested. Again, the testimonials of these Toronto residents are strikingly similar to those found amongst inner-city Black youths in the United States (see for example Brunson and Miller, 2006). However, although the young men reported high levels of police abuse, some did recognize that they themselves play a role in the outcome of a police encounters. These youths acknowledged that negative treatment could sometimes be avoided by being polite and cooperative, highlighting the importance of citizen demeanour in influencing police discretion and behaviour (see Engel et al., 2010). Two other findings from this chapter are worth highlighting. First, in line with previous research (Smith et al., 1991; Worral, 1999), the current study found that the youths' positive experiences with the police had little impact on their overall attitudes toward the institution. On the other hand, their negative experiences had a strong negative impact on their views of the police. This finding underscores, in my opinion, the importance of procedural justice (Tyler and Fagan, 2008). Furthermore, the findings indicate that

the youths' views toward other social institutions in Canada were strongly related to their views about the police. Indeed, young men who had negative attitudes towards education and employment also held negative views of the police. I believe this finding is indicative of the young men's experiences with a variety of social institutions, and a belief that they live "socially unjust lives" (Khenti, 2013).

How do we account for the views and experiences of these young men? First, we must acknowledge that the young men reported relatively high levels of criminal offending and victimization. As suggested by the *differential involvement hypothesis*, the young men's high levels of police contact can at least be partially explained by their own involvement in crime. Therefore, their negative views may result from negative experiences with the police in which the young men were apprehended for criminal behaviour.[59] Social disorganization theory is also insightful in this respect. Recall, these young men were recruited from Toronto's "priority neighbourhoods," areas given such distinction in part because of high levels of youth crime, but also because they house more high "needs populations" (e.g. the unemployed, recent immigrants, single parent families) and lack access to "essential services" (e.g. recreation and community centres, libraries, schools). As such, many of the community characteristics conducive to crime are present in these neighbourhoods. Furthermore, given their high levels of crime, these neighbourhoods have a high police presence and experience a hard, "enforcement style" of policing. As suggested in Chapter Two, opportunities for police discrimination and abuse may be higher in these neighbourhoods because of the high rates of crime, frequent police-citizen encounters, and relative powerlessness of community residents (Weitzer and Tuch, 2006). Therefore, in line with the *mixed model hypothesis,* the results suggest the young men's negative

[59] However, the discrepancy between the frequency with which the young men are stopped and the rate at which they have been arrested indicates that many of the encounters do not result in the young men being formally processed by the police. See Chapter Four for more details.

appraisals of the police, developed through extensive negative experiences, are a product of a combination of their own offending, the types of neighbourhoods they live in, and the manner of policing that is practiced in these neighbourhoods.

Social conflict and racial threat theories can also help us understand the young men's attitudes towards and experiences with the police. Indeed, these young men are poor, Black and marginalized. In other words, they represent the antithesis of the white middle-class norm and thus may frequently be perceived as a threat to the dominant social order. As James (1998: 170), notes "historically, young Black men have been represented in Canadian society as potential criminals that should be feared." As such, the police may seek to control the movement and behaviour of these young men through constant surveillance and harassment, as evidenced in the findings presented above (see also Neugebauer-Visano, 1996). The repeated stops, searches, and verbal/physical abuse experienced by these young men may also contribute to an oppositional Black youth culture. As a result of this culture, Black youths may eventually become openly hostile towards the police, and challenge their authority when detained during street interrogations (a phenomenon that was frequently referenced by Black police officers in Chapter Five). Importantly, this oppositional culture may clash with certain aspects of the traditional police culture, including officers' desire to receive deference from members of the public and maintain authority during police-citizen interactions (Loftus, 2008). Indeed, both young Black men and police officers put a primacy on respect (Anderson, 1999; Loftus, 2008). However, the unequal power dynamics that characterize police interactions with young Black men leave only one group with the ability to command this respect – the police. As a result, the young men leave their encounters with the police feeling angry and frustrated, which negatively impacts their

views of the police (Neugebauer-Visano, 1996). Likewise, these experiences may reinforce negative police stereotypes about Black people and Black youth.

In order to provide a different perspective on the policing of Black males and to help understand the perceptions and experiences of Black people more generally, I next examined the content of interviews with a sample of Black male police officers from the Greater Toronto Area. These Black officers' perspectives are unique in that they are informed by both the experience of being a Black male, and the experience of being a law enforcer (see also Bolton and Feagin, 2004). Overall, the Black police officers involved in this study supported the assertion that Black people in Toronto have more negative perceptions of and experiences with the police than do other citizens. Indeed, the vast majority of the officers believed that racial bias in policing exists and that the negative attitudes of Black citizens are both accurate and justified (see also Alex, 1969; Leinen, 1984; Holdaway and Baron, 1997; Bolton and Feagin, 2004). The officers also agreed that Black citizens, particularly Black males, are disproportionately targeted by police surveillance and enforcement activities. The officers also argued that Black citizens are treated with hostility and disrespect by many police officers during public encounters. The officers suggested that a number of factors contribute to the police treatment of Black citizens and to the attitudes and perceptions that result from negative encounters.

First, the officers suggested that criminal offending among Black people results in increased police contacts and increased opportunities for negative interactions (see also Ezeonu, 2010; Satzewich and Shaffir, 2009). Many of the officers suggested that the involvement of young Black men in the drug trade and with gun violence is a major cause of the disproportionate stops and searches that Black men experience. This sentiment is supported by available research illustrating that Black males are disproportionately involved as both the

victims and perpetrators of gun violence in the city of Toronto (Khenti, 2013; Thompson, 2014). Secondly, the officers argued that the treatment that Black people receive from the police is associated with the types of neighbourhoods in which large proportions of Black people reside. According to the officers, Black people are more likely to live in economically depressed neighbourhoods, with elevated levels of crime and disorder. The police officers confirmed that young Black men in these socially disorganized neighbourhoods are more involved in crime and subsequently targeted by the police. Again, these are the very neighbourhoods in which police surveillance tactics are deeply entrenched and opportunities for police discrimination and abuse are high (Weitzer, 2010).

Interestingly, in the end, the officers provided a rather nuanced understanding of the traditionally negative relationship between Black citizens and the police. In general, their views seem to align well with the *Mixed Model Hypothesis* discussed in Chapter Two. Not only did the officers credit the criminal involvement of Black men with influencing their treatment by the police, they also acknowledged the existence of discrimination within policing – at both the individual and system level. Many officers made reference to both individual and systemic racism as influencing the treatment that Black people receive from the police. Although prohibited by official policies, some of the officers still felt that racial biases held by their colleagues would result in discriminatory treatment directed towards Blacks. This sentiment was particularly true for officers from "out of town," those individuals who had been raised outside of the Greater Toronto Area and had come into the city to take up a career in policing (see also Bolton and Feagin, 2004). The officers involved in this research felt that police recruited from areas outside of the city were more likely to exhibit racist behaviours than those who had been raised in a more multicultural setting that enabled interaction across racial lines.

Racial biases, however, were not only thought to affect officers from out of town. Many of the respondents argued that the police are afraid of Black men because of racist stereotypes that associate Blackness with crime and violence. Police stereotypes about Black men were a key theme raised by the police respondents. In line with racial threat and critical race theories, the officers suggested that police officers in Toronto hold exaggerated stereotypes about young Black men that negatively influence how they interact with Black males and police Black communities. The officers suggested that such fear results in the police being more authoritative with Black males in order to maintain control over specific street interactions. Police were also described as being less understanding and more hostile during encounters with Black males than males from other racial/ethnic backgrounds. Importantly, this hostility on the part of officers is met by equal treatment on the part of Black males – who usually resent frequently being stopped and disrespected by the police. I refer to this phenomenon as a process of "mutual disdain:" each party enters into an interaction with a certain amount of hostility and a preconceived idea about how they will be treated by the other party. As suggested by the officers, the phenomenon of mutual disdain may help us understand why Black peoples' experiences with the police are so frequently negative.

Finally, there was a view held by some officers that Black people's experiences with the police are reflective of broader social inequalities and cannot be understood simply within the confines of individual encounters. Indeed, in providing suggestions for improving the relationship between Black communities and the police, some officers recognized that the social circumstances of Black people contribute greatly to their experiences with and perceptions of the police (see also Ezeonu, 2010). Thus, they argued that in order to improve this relationship, we need also to improve the plight of Black people; to help reduce poverty levels amongst Blacks

and to better their educational and employment outcomes. In sum, we need to reduce their social, political and economic marginalization.

How do we account for the views of these officers? To reiterate, these officers were chosen specifically because they are Black, because they are male, and because they are police officers. We must understand their views as being influenced by their unique social positions. Indeed, the views of these officers are no doubt influenced by their experiences as Black men. These experiences include the fact that many have themselves faced the racism that is present in contemporary Canadian society. For example, some of the officers spoke about the negative treatment they had received at the hands of the police before becoming officers themselves. These officers felt that entering into policing would provide them with the opportunity to promote positive change. Likewise, the officers were cognizant of the vicarious police experiences of their friends and family members. As such, their views about the police treatment of Black citizens are informed by the experiences of those around them (see also, Alex, 1969; Leinen, 1984; Ezeonu, 2010).

These officers' views are also informed by their experiences on the job. First, the officers are aware of the racism perpetuated by their colleagues. As illustrated above, the officers have seen firsthand the negative treatment of Black citizens by members of their own police services. Some of the officers have also heard their fellow officers talk about Black people in a disparaging manner, which they believe reflects these officers' policing practices. Furthermore, the officers' views appear to have been influenced, at least in part, by their exposure to the police occupational culture. For example, their unwillingness to report the wrongdoing of their colleagues, instead believing that informal means of recourse are preferable, shows adherence to the code of silence and an affinity amongst officers.

Finally, it should be noted that the officers' views appear to be influenced by the positions that they occupy within their own police services, and the length of time they have spent on the job. As noted above, some of the ranking officers (supervisors and managers) stated that they are shielded from police discrimination and abuse because they no longer on patrol and in the streets. Their rank also shields them from witnessing or hearing about discrimination due to mandatory reporting requirements. Because ranking officers must formally deal with the misconduct of their subordinates, such behaviour is less likely to come to their attention. Length of service also appears to influence these officers' views about the treatment of Black citizens. First, some of more experienced officers noted that they have witnessed a reduction in the frequency of police discrimination against Blacks over the course of their career. These officers argued that, in line with general changes in society, overt racial discrimination is less prevalent in policing today than it was in the past (Pettigrew, 1979; Henry and Tator, 2005). The officers also suggested that the new recruitment practices that put a premium on education, life experience, and exposure to diverse groups have had a positive influence on the type of people brought into policing (see also Skolnick, 2008). As a result, they believe these new officers are less influenced by racial discrimination than their predecessors.

Overall, in my opinion, the findings provide considerable support for the *Mixed Model Hypothesis*. The criminal offending of Black males influences the likelihood that they will be stopped by the police. Likewise, police officers argue that the involvement of Black youth in crime and the prevalence of crime and violence in Black communities have a large impact on how Black men are policed. On the other hand, the multivariate analysis presented in Chapter Three shows that Black racial background remains a significant factor in predicting police stops, even after controlling for other theoretically relevant variables. This suggests that race influences

police decision-making, an assertion further supported by the testimonials of the Black police officers themselves. Indeed, the Black officers argued that the police discriminate against Black men on the basis of racist stereotypes and personal racist beliefs.

Similarities and differences amongst three groups of Black men

There are a number of common themes that run through the findings from the three groups of Black men with regard to their general perceptions of and experiences with the police. Most notably, there is a shared view amongst the three groups about how the police treat different people. For example, the Black males involved in this study held remarkably similar perceptions of police bias involving Black people. Indeed, 70 percent of the adult Black males believed the police treat Black people worse than white people. Similarly, 76% of the young Black men examined in Chapter Four also felt that the police treat Black people worse than members of other racial groups. Finally, the Black police officers involved in this study were actually the most likely to perceive police bias against Black people. Indeed, 80 percent of these officers believed that Black people are treated worse by the police, at least sometimes.

The findings presented in Chapter Three illustrated the negative impact that police stops have on Black respondents' views of the police. While police stops contribute to perceptions of police bias for Black respondents, the same is not true for members of other racial backgrounds. This is important because of the disproportionately high levels of police contact that Blacks experience. The sample of adult Black men drawn from the general population experienced much higher rates of police stops and searches than did members of other racial groups. The young Black men in the second sample also had very high levels of contact with the police. Finally, the police officers in the third sample tended to agree that the police specifically target

young Black males. The negative impact of police stops on Blacks' perceptions of the police appears to be influenced by both the frequency with which Blacks are stopped by the police, and by their perceived treatment during these encounters. The adult Black males in the first study were the most likely of all respondent groups to believe that the police had treated them poorly during their last encounter. Likewise, two-thirds of the young Black men in the second study felt that the police treated them unfairly and with disrespect (69%) during their last police encounter.

Finally there is a fair degree of congruence in the views of the adult Black males and those of Black police officers with regards to racial differences in police use of force. Indeed, 55% of Black men from the general population and 51% of the Black police officers believed the police are more likely to use physical force on a Black person than a white person. We also see high rates of police use of force in the young Black male sample, where 37% reported that their most negative experience with the police involved a physical assault or police brutality. Interestingly, the views of the Black men and the police officers were not so similar when it came to police shootings. While 79% of the Black men felt that a Black person is more likely to be unfairly or wrongly shot by the police than a white person, substantially fewer (41%) police officers felt this way. Nonetheless, although much lower than the general population of Black males, a substantial proportion of the Black male police officers still believed that a Black person was more likely to be unfairly or wrongly shot by the police than a white person.

Another difference in views appears with regards to the use of racist language. While a number of the youth reported racist language being directed at them by police officers, very few of the police respondents reported witnessing such behaviour. As noted above, this difference could be reflective of the different position that each group occupies. The young men may experience such behaviour because they are relatively powerless in comparison to the police,

who feel that they can get away with such behaviour in certain neighbourhoods. The Black police officers, on the other hand, may be shielded from the racist behaviours of their colleagues because they are Black, and other officers may not want to offend them. Alternatively, officers using such language may do so only in the presence of "safe" company, amongst colleagues they know will not report such behaviour. Another explanation for the discrepant findings could be due to reporting behaviour. The young men may have embellished their negative experiences in order to provide what they view as socially desirable responses (Warren et al., 2011). Likewise, the police officers may have neglected to admit that they have witnessed racist language being used because they felt it would reflect negatively on their colleagues and on their police services. However, given the similarity of the testimonials of the young men with other sources (see Neugebauer-Visano, 1996; James, 1998; Brunson and Miller, 2006; Rankin and Winsa, 2012), and the fact that the police respondents spoke at length about other forms of discrimination, I believe these views accurately depict the experiences of each group.

Overall, the views and experiences of the Black men profiled in this thesis appear to be more similar than different. Clearly, a large proportion of the Black men included in this study have had firsthand experience with the police in one form or another. These experiences range from polic-initiated stops to racist language to police brutality and false arrests. It is quite likely that these Black men also experience policing vicariously through their friends, family members and social networks. Their views, therefore, are the product of shared experiences with policing, and indicative of the great presence that the police have in the lives of Black men in Toronto.

Study Strengths and Weaknesses

This study has produced a range of findings that further our understanding of the policing of Black males in the Greater Toronto Area. Nevertheless, the study has a number of weaknesses. First, Chapter Three examined racial differences in perceptions of the police amongst Black, white and Chinese adults in the Greater Toronto Area. As noted above, this survey was a replication of an earlier study in which Chinese respondents were considered a racial group. However, under the definition of race provided in Chapter Two, and in light of current racial categorizations, Chinese people do not constitute a racial group in their own right. Instead, they are considered "Asian" in the Canadian context (Chui, Tran, and Maheux, 2008). Therefore, caution should be made in extending the observed racial differences in perceptions of and experiences with the police to other Asian groups (i.e., Japanese or Koreans).

A further weakness of this study is that random sampling techniques were not used in the recruitment of participants in Study Two (youths) or Study Three (police). Therefore, it is difficult to determine the extent to which the results of these two studies can be generalized to all Black youths (including Black female youths) and all Black officers. For example, the Black officers who agreed to participate in this research may have held different views from those officers who refused to participate. It may be that the officers who refused to participate held more conservative views or had fewer complaints about the policing of Black men in Toronto. Conversely, the officers who refused to participate may have been those who were most victimized by police racism, and were thus uncomfortable discussing these issues. Another potential weakness of the present study is the exclusion of comparison racial groups from the youth and police samples. I chose to focus specifically on Black males because previous research illustrates that they have the highest levels of unwanted police contact, and have arguably the

worst relationship with the police of all racial-ethnic groups in Canada. It could be argued that different findings would have been produced had other racial groups been included in the analysis. Nevertheless, given the abundance of research on inter-racial differences in perceptions of and experiences with the police, it has been acknowledged that we need to better understand the experiences of those groups most targeted by the police activities (Stewart et al., 2009; Brunson, 2010). As such, Black males remained the primary focus of the research. Finally, in order to protect the privacy of the police officers involved in this study, I did not record identifying information such as the name of the police service for which they work. Therefore, I cannot distinguish between officers from different services to determine whether they hold different views about the policing of Black males in Toronto.

In addition to its weaknesses, the present study also has a number of strengths. One of the strongest elements of this research is the use of three data sources. In addition to the random, representative sample of Black males, the research includes two distinct groups of Black men that provide insight on the policing of Black males from two very different perspectives. To date, no Canadian research has included such a large sample of young Black men to examine their views of and experiences with the police in such detail. Likewise, no Canadian research has drawn on the perspectives and experiences of such a large group of Black police officers. Ultimately, the strength here lies not in these three groups in isolation, but rather in the triangulation of their perceptions and experiences. In addition to the use of multiple data sources, the mixed methods approach further strengthens the quality of this research. Rather than relying exclusively on either qualitative or quantitative methods, both of which have their respective strengths and weaknesses (Johnson and Onwuegbuzie, 2004), this project utilizes a combination of both. This is not to say that the methodology used is perfect, however; the quantitative data

allows for generalizations to be drawn about the policing of Black males in Toronto, while the qualitative data allows for a more nuanced understanding of Black male experiences and perceptions. Overall, the findings of this research are consistent with previous studies from Toronto and other jurisdictions, further strengthening the validity of the conclusions.

Contemporary Relevance

The findings of this research are important because they highlight the prevalence of negative attitudes towards the police within Toronto's Black communities. As noted in Chapter Two, the police and the public have an interdependent relationship. Positive views towards the police are necessary in order to ensure that citizens will cooperate with the police as victims, witnesses, complainants, and the accused. On the other hand, citizen perceptions of illegitimacy can contribute to alienation amongst the affected citizens and withdrawal from mainstream society. Such a situation may contribute to criminal offending amongst those who question the legitimacy of the law and how it is enforced (Decker & Smith, 1980; Tyler, 1990; Lafree, 1998). Thus, police treatment of Black citizens in Toronto may hamper the crime fighting efforts of the police, undermining community policing initiatives while simultaneously contributing to criminal offending amongst Black citizens.

The over-policing of Black men in Toronto also has unfortunate consequences for both innocent and guilty Black people. While innocent whites have little reason to believe they will have their vehicle, person, or property searched by the police, the same cannot be said for innocent Blacks (Harris, 1999). Because Black people garner undue attention from the police, many innocent Black citizens are subject to unwarranted police stop and search practices that in at least some cases constitute violations under the Canadian Charter of Rights and Freedoms

(Tanovich, 2006). Furthermore, because the police disproportionately target Blacks for investigative purposes, Black law violators are more likely to be caught than white law violators. Such a situation results in the rationalization of police discrimination while simultaneously strengthening public perceptions of Black criminality (Harris, 1999; Khenti, 2014).

Irrespective of actual rates of offending, Black law violators are more likely to be caught, which means they are disproportionately burdened by criminal records that limit their future employment opportunities and restrict their ability to contribute meaningfully to their families and communities (Alexander, 2012). As a result, Black communities are further disadvantaged by the removal of wage earners, mentors and social contacts. A growing body of research has also begun to examine how the experience of police discrimination impacts mental health and well-being. For example, the Ontario Human Rights Commission has identified a number of harms associated with the experience of racial profiling, including increased fear, a sense of intimidation, reinforced anxieties, and enhanced feelings of helplessness and hopelessness that contribute to suicidal thoughts, depression, and drug use (Ontario Human Rights Commission, 2003). American research has also identified the humiliation associated with the experience of racial profiling as a cause of chronic psychological stress amongst Black citizens (Harris, 2003). These mental health effects and associated coping strategies, such as drug dependency, may further contribute to offending amongst afflicted Blacks (Khenti, 2014).

The disproportionate targeting of Black males by the police also has devastating impacts on Black families and Black communities by contributing to concentrated incarceration. This point is particularly salient in light of the continuing war on drugs, the recent passage of tough on crime measures, and the ongoing prison expansion in Canada. As Khenti (2014) points out, the Canadian war on drugs has contributed to the disproportionate incarceration of Black Canadians

at a time when prison populations have remained stable and crime rates have fallen. Similarly, in writing on the consequences of the over-policing of Black people in Ontario, the Commission on Systemic Racism argued: "one effect of the war on drugs, intended or not, has been the increase in imprisonment of black people … [because] of the intensive policing of low income areas in which black people live" (p. 82–83 as cited in Khenti, 2014). Indeed, Ontario saw a 1,164% increase in the number of Black people admitted to prison for drug trafficking offences between 1986 and 1993, while the increase for white offenders was a modest 151% (Commission, 1995; Khenti, 2014). Likewise, prison admissions for young Black men in Ontario have increased in the last ten years, while admissions for young white men have declined, suggesting that the burden of incarceration is becoming increasingly concentrated amongst Black and other racialized groups (Rankin and Winsa, 2013). Concentrated incarceration has a damaging effect on individuals, families and communities (Browning et al., 2001; Clear, 2002; Fazel and Baillargeon, 2011; Wildeman et al., 2012).

In sum, the impact of police discrimination can have consequences that extend well beyond individual police encounters. The evidence presented above challenges the notion that Canada is a tolerant nation, free of the racial strife and history of discrimination that characterize the American experience. Indeed, the findings presented herein indicate that Black males' experiences with the police are remarkably similar to those in New York and London, two large metropolitan cities currently contending with issues of police discrimination (Singer, 2013; Harris, 2014). Indeed, recent data shows that Black people are stopped and documented (carded) by the police in Toronto at a rate three times their representation in the general population (Rankin and Winsa, 2012a). By comparison, in New York Blacks are stopped at a rate twice their representation in the general population, and in London three times their representation in

the general population (African Canadian Legal Clinic, 2013; Hurrell, 2013).[60] The similarities cannot only be found in the statistics, but also in Black males' feelings about their treatment at the hands of the police. Writing on impact of stop-and-search on young people in London, Jackson and Smith (2012) write:

> Young people felt victimised by repeated stop and searches, embarrassed to be seen involved in a stop and search, and annoyed to have their time, and police time, wasted. The impact of this on their attitudes to and relationships with the police was to create a strong sense of injustice and resentment. Stop and search makes a big impact on how young people feel towards the police (1).

Likewise, commenting on the situation in New York, Shedd (2012) notes the following: "the consequence [of over-policing] is greater numbers of young people who, shaped by their low expectations that police will fulfill their duties fairly, view society as fundamentally unjust" (2012: 27). These comments could have easily been lifted from the pages of this thesis, and support my assertion that Black males are treated similarly by the police in these three different jurisdictions.

The Importance of International Comparisons and Historical Contextualization

I believe that the similarities in the way Black men experience and perceive policing in Canada, the United States and the United Kingdom is important to furthering our understanding of the nature of Black males' relationship with the police. Indeed, it is my contention that most current theoretical orientations employed to explain this relationship are limited in their explanatory power due to a narrow geographical and temporal focus. Take the following quote on the American situation as an example: "Is it possible that police officers across the country, with different training, different policies, different supervisors, all have the same bias? Possibly, but

[60] Previous research has shown that even after controlling for participation in crime and precinct variability, Black people remain over-represented in police stops and searches in New York (Gelman et al. 2007).

there are other explanations that must be explored" (Engel et al., 2010). While it is true that we should consider other explanations, it is also important to consider the possibility that police officers across the country (and across other Western nations) all hold similar biases towards Black men. Drawing on Critical Race Theory, I suggest that they do, and that these similar biases are rooted in the historical and contemporary racialization of Black people. This process of racialization has also contributed to the social inequalities Black people experience in all other areas of social life (as detailed in Chapter Two).

Although race and racialization are geographically and temporally specific (Miles, 1989; Desmond and Emirbayer, 2009), the racialization of Black people has a common history in the period of European colonialism (Montagu, 1963). As I argued above, this history of racialization and colonialism has resulted in the social, political and economic marginalization of Black people in Canada (Henry and Tator, 2005), as it has Blacks in both the United States (Tonry, 2011) and United Kingdom (Fryer, 1984; Small, 1994).[61] Black people in Canada, the United States, and the United Kingdom have also come to be associated with crime and violence in much the same manner (Jiwani, 2002; Phillips and Bowling, 2003; Welch, 2007). A key component of the racialization of Black people and Black men is the phenomenon of dehumanization.

Dehumanization describes the process through which "humanness" is denied to individuals and collective groups (Haslam, 2006). Once an individual or group has been defined as the "other," they can then be dehumanized (Haslam, 2006). The concept is commonly employed in the context of genocide and ethnic conflict. Staub (1989) and Waller (2002), for example, have remarked on the importance of dehumanizing the enemy or the "other" in the context of genocide, given that most human beings do not have the psychological capacity to

[61] Albeit to varying degrees.

carry out the mass slaughter of other people in a systematic and routinized fashion. Through the process of dehumanization, human qualities, such as higher order cognition, civility and morality are withheld from the target group (Haslam, 2006). Dehumanization often involves the association of the subject group with animals or animalistic tendencies (Haslam, 2006). Once a group has been dehumanized, it falls outside of what Fein (1979) describes as a "Universe of Obligation." Fein argues that people who fall within one's universe of obligation are those who must be taken into account, to whom obligations are due, and to whom we can be held responsible (1979: 7). When people fall outside of this universe, offences against them are no longer violations of the normative order. Likewise, Kelman (1976) suggests that the dehumanized no longer elicit compassion or other moral responses, and as a result, may be the targets of violence.

Dehumanization is important in the current context because of the crucial role it has played in the racialization of Black people. As detailed in Chapter Two, European rulers and their spokesmen found it useful to regard and portray Africans as sub-human in order to justify the conquest and enslavement of African people (Clarke 1970: 1). Indeed, slavery rested on the very idea that Black Africans were not human beings, but rather less evolved creatures that could be exploited for their labour – while at the same time being "civilized" through the teachings of Christianity (Clarke 1970). As Africans were not deemed human, they could be enslaved, kept as chattel, and subject to horrific violence. It is my contention that Black people of African descent have not escaped the dehumanized status bestowed upon them during the period of colonialism and slavery. Indeed, contemporary evidence suggests that Blacks are still viewed in dehumanized terms. For example, Goff et al. (2008) conducted a series of studies to test the implicit association between Black people and apes, and examined the implications of this association in

criminal justice terms. Goff and colleagues find that a mental association between Blacks and apes remains among American citizens and find that this association influences cognitive processes and judgement assessments. Specifically, Goff et al. show that the implicit Black-ape association leads to greater endorsement of violence against Black people, and influences jury decisions to execute Black suspects (Goff et al., 2008).

Although not directly tested in this thesis, I suggest that the similarities in the treatment of Black men by the police in Toronto, New York and London are influenced by the dehumanization of Black people. For example, I suggest that the continued marginalization of Black people, which we know contributes to their criminal offending, is allowed to persist because they fall outside of whites' "universe of obligation." As such, white people, who maintain power and dominance, feel little empathy for the circumstances of disadvantaged Blacks, and lack the moral imperative to improve their situation (Tonry, 2011). This may be especially true if it comes at a cost to white privilege. On the other hand, criminal offending on the part of Black people is viewed as characteristic of the race rather than a product of their social circumstances (Tonry, 2011). Therefore, the increased police surveillance of Black people and Black communities is justified in the eyes of whites because it can be attributed to individual behaviour rather than societal failings (Khenti, 2014). This is especially true in the context of the ongoing war on drugs, where Black people have been identified as the primary "enemy" (Tonry, 2011; Khenti, 2014). Furthermore, the treatment that Black people receive at the hands of the police is acceptable, given their criminal proclivities and the fact that whites view them as violent and dangerous. The evidence of Black over-representation in police shootings and state executions provides further evidence of the devaluation of Black life (Hawkins, 1983; 2002; Hampton, 1987; Mills, 1997; Tonry, 2011).

I believe that the current explanations put forth to account for Blacks' perceptions of and experiences with the police could be further strengthened by accounting for the historical processes that have led to the marginalization and criminalization of Black people. Indeed, some urban sociologists have utilized a similar history to describe the emergence of the Black underclass and the mass incarceration of African Americans (see Massey and Denton, 1993; Wacquant, 2002). However, such explanations remain largely absent from the mainstream policing literature. As Goff et al. suggest: "examining the subtle persistence of specific historical representations such as [the Black-ape association] may not only enhance contemporary research on dehumanization, stereotyping, and implicit processes but also highlight common forms of discrimination that previously have gone unrecognized" (2008: 292). The recent depiction of President Obama as an ape on the front of a Belgian newspaper shows that even the most successful and powerful Black men can still be viewed in animalistic terms (Carvajal, 2014). What then can be said about the young Black men that occupy inner-city ghettoes?

Conclusion

The results of the three studies included in this thesis underscore that perceptions of injustice and the experience of racism are real issues in Canadian society that deserve further research attention. Unfortunately, a lack of access to criminal justice data in general – and especially that which is disaggregated by race – makes it difficult for researchers to investigate these issues in the Canadian context (Wortley, 1999; Miller and Owusu-Bempah, 2011). In order to facilitate the development of a body of scholarship on race, crime and criminal justice in Canada, our government and criminal justice agencies should look towards the British and American models that allow public access to a range of race-based data from the criminal justice system. Although

the availability of such data has not eliminated racial disparities in policing and other justice outcomes in the United States or United Kingdom, it has helped researchers and policy makers to identify areas of concern and work towards ameliorating these disparities. Based on the findings of this thesis there are several areas of future research that could advance our knowledge of the relationship between race, crime, and criminal justice. First, as Aboriginal Canadians also share the burden of Canada's colonial history with Canada's Black population, comparative research examining the similarities and differences in each groups' experiences in Canadian society may help further our understanding of the processes that contribute to their great overrepresentation in crime and criminal justice statistics. Likewise, given the apparent similarities in Black males' experiences with the police in Canada, the United Kingdom and the United States, international comparative research in this area may help us to further understand both the causes and consequences of this enduring, troubled relationship. Finally, further examination of the pervasiveness of the dehumanization of Black people in different jurisdictions and contexts would enhance research on racism and discrimination in general, and with regard to policing in particular.

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APPENDIX A: PERCEPTIONS OF CRIME AND CRIMINAL INJUSTICE
2006 SURVEY

SECTION B: EVALUATIONS OF THE POLICE AND CRIMINAL COURTS

B1. In general, do you think the Metro Toronto POLICE are doing a good, average, or a poor job enforcing the laws, or are you not sure?

<1> good
<3> average
<5> poor
<8> not sure/don't know
<9> refused

B2. Do you think the Metro Toronto Police are doing a good, average, or poor job, being approachable and easy to talk to?

<1> good
<3> average
<5> poor
<8> not sure/don't know
<9> refused

B3. Do you think the Metropolitan Toronto Police are doing a good, average, or poor job, supplying information to the public on ways to reduce crime?

<1> good
<3> average
<5> poor
<8> not sure/don't know
<9> refused

B4. Do you think the Metropolitan Toronto Police are doing a good, average, or poor job of making your neighbourhood a safe place?

<1> good
<3> average
<5> poor
<8> not sure/don't know
<9> refused

SECTION C: POLICE TREATMENT OF DIFFERENT GROUPS

C1. We are interested in how you think the POLICE treat different people.

In general, do you think the police treat poor people the same as wealthy people?

INTERVIEWER: if asked, poor means less than $15,000 per family and wealthy means more than $100,000 per family.

<1> yes (treat the same) [go to C4]
<5> no (treat differently) [go to C2]
<7> sometimes treated same/sometimes treated differently [go to C2]
<8> don't know [go to C4]
<9> refused [go to C4]

C2. Do you think they treat poor people MUCH better, BETTER, WORSE, or MUCH worse, than they treat wealthy people or are you not sure?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to C4]
<8> don't know/depends [go to C4]
<9> refused [go to C4]

C3. In general, how often do you think they treat poor people [fill rC1b] than wealthy people? Would you say often, about half the time, once in a while, or almost never or are you not sure?

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

C4. Do you think the police treat younger people, in the 18 to 25 age range, the same as people who are 50 years of age or older?

<1> yes (treat the same) [go to C7]
<5> no (treat differently) [go to C5]
<7> sometimes treated same/sometimes treated differently [go to C5]
<8> don't know [go to C7]
<9> refused [go to C7]

C5. Do you think they treat younger people MUCH better, BETTER, WORSE, or MUCH worse, than they treat older people?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to C7]
<8> don't know/depends [go to C7]
<9> refused [go to C7]

C6. How often do you think they treat younger people [fill rc2] than older people? Would you say often, about half the time, once in a while, or almost never?

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

C7. Do you think the police treat women the same as men?

<1> yes (treat the same) [go to C10]
<5> no (treat differently) [go to C8]
<7> sometimes treated same/sometimes treated differently [go to C8]
<8> don't know [go to C10]
<9> refused [go to C10]

C8. Do you think they treat women MUCH better, BETTER, WORSE, or MUCH worse, than they treat men?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to C10]
<8> don't know/depends [go to C10]
<9> refused [go to C10]

C9. How often do you think they treat women [fill rc2] than men? Would you say often, about half the time, once in a while, or almost never?

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

C10. In general, do you think the police treat people who do not speak English the same as people who do speak English?

<1> yes (treat the same) [go to C13]
<5> no (treat differently) [go to C11]
<7> sometimes treated same/sometimes treated differently [go to C11]
<8> don't know [go to C13]
<9> refused [go to C13]

C11. Do you think they treat people who do not speak English MUCH better, BETTER, WORSE, or MUCH worse, than they treat people who do speak English?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to C13]
<8> don't know/depends [go to C13]
<9> refused [go to C13]

C12. How often do you think they treat people who do not speak English [fill rc2] than people who do speak English? Would you say often, about half the time, once in a while, or almost never?

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

C13. In general, do you think the police treat Black people the same as White people?

<1> yes (treat the same) [go to C16]
<5> no (treat differently) [go to C14]
<7> sometimes treated same/sometimes treated differently [go to C14]
<8> don't know [go to C16]
<9> refused [go to C16]

C14. Do you think they treat Black people MUCH better, BETTER, WORSE, or MUCH worse, than they treat White people?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to C16]
<8> don't know/depends [go to C16]
<9> refused [go to C16]

C15. How often do you think they treat Black people [fill rc2] than White people? Would you say often, about half the time, once in a while, or almost never?)

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

C16. In general, do you think the police treat Chinese people the same as White people?

<1> yes (treat the same) [go to next section]
<5> no (treat differently) [go to C17]
<7> sometimes treated same/sometimes treated differently [goto C17]
<8> don't know [go to next section]
<9> refused [go to next section]

C17. Do you think they treat Chinese people MUCH better, BETTER, WORSE, or MUCH worse, than they treat White people?

<1> much better
<3> better
<5> worse
<7> much worse
<0> the same [go to next section]
<8> don't know/depends [go to next section]
<9> refused [go to next section]

C18. How often do you think they treat Chinese people [fill rc2] than White people? Would you say often, about half the time, once in a while, or almost never?

<1> often
<3> about half the time
<5> once in a while
<7> almost never
<8> don't know/depends
<9> refused

SECTION D: TRAFFIC STOPS

D1. NOT INCLUDING R.I.D.E programs and Christmas spot checks, in the past two years have you been stopped by the police when you were driving in a motor vehicle (as either a passenger or a driver)?

<1> yes [go to D2]
<5> no [go to D24]
<8> don't know [go to D24]
<9> refused [go to D24]

D2. In the past two years, how many times have you been stopped by the police while driving in a motor vehicle like a car, truck or motorcycle?

<0> Never [goto D24]
Enter number of times_____
<98> don't know
<99> refused

D11. The last time you were stopped by the police while driving in a motor vehicle, did the police search you or anybody else that was in the vehicle?

<1> yes
<5> no
<8> don't know
<9> refused

D12. The last time you were stopped by the police while driving in a motor vehicle, did the police search the vehicle?

<1> yes
<5> no
<8> don't know
<9> refused

D16. The last time you were stopped while driving in a motor vehicle, do you think the police treated you politely and with respect?

<1> yes
<5> no
<8> don't know
<9> refused

D17. The last time you were stopped while driving in a motor vehicle, did you and the people you were with treat the police politely and with respect?

<1> yes
<5> no
<8> don't know
<9> refused

D18. Overall, the last time you were stopped while driving in a motor vehicle, do you think the police treated you fairly?

<1> yes
<5> no
<8> don't know
<9> refused

D20. Were you upset the last time you were stopped by the police while driving in a car? Would you say that you were:

<1>	Not upset at all	<2>	Somewhat upset
<3>	Quite upset	<4>	Very upset
<98>	Don't know	<99>	Refused

PEDESTRIAN STOPS

D24. Now I would like to ask you a few questions about other types of contact with the police. In the last two years, have you ever been stopped by the police when you were walking on the street, in a shopping mall, in a park or in some other public place?

<1> yes [goto D25]
<5> no [go to next section]
<8> don't know [go to next section]
<9> refused [go to next section]

D25. In the past two years, how many times have you been stopped by the police when you were walking in a public place?

<0> Never [go to next section]
Enter number of times_____
<98> don't know
<99> refused

D34. The last time you were stopped by the police while you were walking, did the police search you ?

<1> yes
<5> no
<8> don't know
<9> refused

D38. The last time you were stopped while walking, do you think the police treated you politely and with respect?

<1> yes
<5> no
<8> don't know
<9> refused

D39. The last time you were stopped while walking, did you treat the police politely and with respect?

<1> yes
<5> no
<8> don't know
<9> refused

D40. Overall, the last time you were stopped while walking, do you think the police treated you fairly?

<1> yes
<5> no
<8> don't know
<9> refused

D41. How did you feel the last time you were stopped by the police while walking? How did being stopped by the police make you feel? PROBE: Did you feel anything else?

RECORD ALL FEELINGS:_____

D42. Were you upset the last time you were stopped by the police while walking? Would you say that you were:

<1>	Not upset at all	<2>	Somewhat upset
<3>	Quite upset	<4>	Very upset
<98>	Don't know	<99>	Refused

D43. Were you frightened the last time you were stopped by the police while walking? Would you say that you were:

<1>	Not afraid at all	<2>	Somewhat afraid
<3>	Afraid	<4>	Very afraid
<98>	Don't know	<99>	Refused

D44. The last time you were stopped while walking, was the police officer who stopped you Black, Chinese, White or a member of another ethnic group?

<1> Black
<3> Chinese
<5> White
<7> Other (specify) _____
<8> don't know
<9> refused

D45. Was the police officer who stopped you a male or a female?

<1> Male
<3> Female
<5> Both male and female
<7> Other (specify) _____
<8> don't know
<9> refused

SECTION M: RACIAL PROFILING

Over the past few years, racial profiling has become a major issue in Canadian society. Racial profiling is said to exist when people are stopped, questioned and searched by the police or Customs agents because of their racial characteristics – not because of their individual behaviour or their actions.

M1. In your opinion, is racial profiling a problem in Canada? Would you say it is a big problem, a medium sized problem, a small problem or is it not a problem at all?

<1> A big problem
<2> A medium sized problem
<3> A small problem
<4> Not a problem at all.
<8> Don't know
<9> Refused

M2. In your opinion, have you ever been a victim of racial profiling by the police?

<1> Yes [go to M3]
<2> No [go to M4]
<8> Don't know [go to M4]
<9> Refused [go to M4]

M3. In your life, how many times have you been the victim of racial profiling by the police? Would you say once, twice, three to five times, six to ten times, ten to twenty times or more than twenty times?

<1>	Once	<2>	Twice
<3>	Three to five times	<4>	Six to ten times
<5>	Ten to twenty times	<8>	More than twenty times
<8>	Don't know	<9>	Refused

M4. Have any of your close friends or family members been the victim of racial profiling by the police? Would you say none of them, a few of them, several of them, most of them or all of them?

<1>	No – None of them	<2>	A few of them
<3>	Several of them	<4>	Most of them
<5>	All of them	<8>	Don't know
<9>	Refused		

APPENDIX B – CHAPTER THREE VARIABLE CODING

DEPENDENT VARIABLES

The Police Evaluation Index: Respondents were asked whether they felt that the police were doing a good, average, or poor job of 1) enforcing the laws; 2) being approachable; 3) supplying information to the public; and 4) keeping their neighbourhood safe. If respondents gave the police a rating of "poor" they were given a score of 0; if they indicated that they "don't know" how they police were doing they were given a score of 1; if they felt the police were doing an "average" job they were given a score of 2; and if they rated police performance as "good" were given a score of 3. Responses to these four measures were then combined in order to create a single index (alpha=.75) of police performance ranging from 0 to 12 (mean=7.78).

The Police Bias Index: Respondents were asked how the police treated: 1) poor people vs. wealthy people; 2) young people vs. older people; 3) women vs. men; 4) people who speak English vs. people who do not speak English; 5) black people vs. white people; and 6) Chinese people vs. white people. If respondents reported that they felt a particular group was treated the same they were given a score of 0; if they reported that they "don't know" they were given a score of 1; if they felt that they were treated "better" or "worse", they were given a score of 2; and if they felt they were treated "much better" or "much worse", they were given a score of 3. Finally, a third set of questions tapped the perceived frequency with which such bias occurs. Responses to this item were coded from '1' if they "did not know" to '4', if they felt that discrimination occurs often. The variables measuring degree and frequency of differential treatment were then multiplied and combined in order to create a single index (alpha=0.80)of police bias ranging from 0 to 87 (mean score=29.11). The higher the score on the Police Bias Index, the greater the level of perceived police bias.

INDEPENDENT VARIABLES

Race: Respondents were asked to self-identify their racial background. Two dummy variables were created to denote race. Black (1=Black; 0=other) and Chinese (1=Chinese; 0= other). White is the default category left out of the analysis: 33% of the final sample self-identifies as black; 33% self-identifies as Chinese and 33% self-identifies as white.

Age: Age is an interval variable. Age is measured in years ranging from 18 to 89 years. Mean age=45.1 yrs; Median age=45 yrs; Standard Deviation=15 yrs.

Gender: Gender is dummy coded (1=male; 0=female). Less than half of the sample (40%) is male.

Foreign Born: Respondents were asked to report their place of birth. Foreign Born was dummy coded 1=Other; 0=Canada. Approximately 63% of the sample is foreign born.

Unemployment: Respondents were asked about their employment status. Unemployment was dummy coded 1=unemployed; 0= employed. Approximately 6% of the sample is unemployed.

Live in Projects: Respondents were asked whether they live in a social housing project. Live in Projects was dummy coded 1=lives in social housing; 0=does not live in social housing. Approximately 12% of the sample lives in a social housing project.

Social Class: Respondents were asked to identify the social class they felt they belong to. Subjective social class was coded: 0=lower or working class; 1=middle-class; 2=upper-middle class; and 3= wealthy. Just under one-quarter of the sample (22.3%) of the sample stated they are lower or working class, while almost two-thirds (63.3%) stated that they are middle class. Less than one percent of the sample stated that they are wealthy.

Education: Respondents were asked to state their highest level of educational attainment. Education is coded: 1 = elementary or less; 2 = some high school; 3=completed high school; 4= some post-secondary; 5=completed college; 6= bachelor's degree; 7= professional or graduate degree. Few of the respondents had not completed high school (15.2%). One-fourth of the sample (27%) has a university degree.

Public Activities: Respondents were asked how often they engaged in four different types of public activity: a) used public transit; b) visited shopping malls or theatres; c) hung out on the street or in parks; and d) went to bars or nightclubs. Response options ranged from 0 (never) to 6 (every day). Answers to these four questions were combined into a single variable measuring frequency of engaging in public activities (alpha=0.66). This variable ranges from 0 to 24 (mean=8.55).

Community Disorder: Respondents were asked about the frequency with which the following things happen in their neighbourhood: a) homeless people on the street begging for money; b) prostitution; c) drug trafficking; d) gun violence; and e) violence between rival gangs. Responses to these questions ranged from 0 (never) to 4 (very often). Responses to these five question were combined into a Community Disorder Index (alpha=0.70). Scores on this index range from 0 to 20 (mean=2.54).

Crime Victim: Respondents were asked whether they have been the victim of a violent crime like an assault, robbery or a sexual assault. Crime victim was dummy coded 1=crime victim; 0=not crime victim. Slightly over one in ten respondents (12.1%) has been the victim of a violent crime.

Arrested: Respondents were asked if they had been arrested in their lifetime. Arrested was dummy coded 1=arrested; 0=not arrested. 7% of the sample has been arrested.

Police Stops: Respondents were asked how many times in the past two years they had been subjected to a police stop. Police initiated contact (past two years) was coded: 0=less than two stops; 2=three or more stops. Approximately one-third of the sample (27.8%) had been stopped by the police at least once in the past two years.

Vicarious Police Contact: Respondents were asked any family members had been the victim of racial profiling by the police in the past two years. This variable was dummy coded: 1=family/friends have been profiled in the past 2 years; 0=family and friends have not been profiled. 42% of the respondents reported that they had a family member or friend who had been profiled by the police in the past two years.

Criminal record: Respondents were asked if they have a criminal record. Criminal record was dummy coded: 1=has a criminal record; 0=no criminal record. Approximately 3% of the sample has a criminal record.

Alcohol Use: All respondents were asked how often they had consumed alcohol in the past twelve months. Response options were: 1=Once or twice; 2=Less than once per month; 3=About once per month; 4=A few times per month; 5=About once per week; 6=More than once a week; 7=Every day or almost every day. Slightly over 40% of the sample reported that they had consumed no alcohol in the past twelve months, while 5% reported that they consume alcohol every day or almost every day.

Marijuana Use: Respondents were asked whether they had consumed marijuana in the past two years. Marijuana use is dummy coded: 0=has not used marijuana in past two years; 1=has used marijuana in past two years. 18% of the sample has used marijuana in the past two years.

Chinese Stop: Chinese Stop is an interaction term created for Chinese respondents who have been stopped by the police. The variable was created by multiplying the total stop variable with the Chinese variable. Chinese Stop is a dummy variable coded 1=Chinese and Stopped; 0=everyone else.

Black Stop: Black Stop is an interaction term created for Black respondents who have been stopped by the police. The variable was created by multiplying the total stop variable with the Black variable. Black Stop is a dummy variable coded 1=Black and stopped; 0=everyone else.

APPENDIX C: PREVENTION INTERVENTION TORONTO CLIENT INTERVIEW

EVALUATION INTAKE INTERVIEW # ONE:
PERSONAL AND FAMILY BACKGROUND

(Includes family background, educational and employment history and aspirations, drug and alcohol use, mental health/values)

Thank you for agreeing to participate in this interview. Remember this is not a test. There are no right or wrong answers. We just want to hear about your life. We want you to just tell us about your experiences and about how you feel about things lately. You do not have to answer any questions that you do not want to answer. The interview is also completely private and confidential.

Please answer all the questions as honestly as possible. If you are not honest we will not know how you are really feeling and the program we develop will not reflect your opinions and concerns.

If you have any questions during the interview please just stop me and ask me. Do you have any questions before we get started? Let's get started – OKAY?

Interviewer name: _____

RESPONDENT NUMBER: _____

Respondent age: _____

Respondent gender: _____

Youth's home location (select one):

a. Jane and Finch
b. Jamestown/Rexdale
c. Weston/Mt. Dennis
d. Lawrence Heights

Location of interview (select one and specify where, i.e., coffee shop, JVS office, etc.):

a. Jane and Finch (specify: _____)
b. Jamestown/Rexdale (specify: _____)
c. Weston/Mt. Dennis (specify: _____)
d. Lawrence Heights (specify: _____)

Interview date: _____

Interview start time: _____

PART A: BACKGROUND INFORMATION

To begin with, we are going to ask you a few questions about your personal background.

When we say parent(s), mother, or father, answer for the parent, guardian, or stepparent with whom you live most of the time or who you consider to be your mother/mother-figure or father/father-figure.

A1. Who do you currently live with? For example, do you live with your mother and father, or do you live with other relatives, or do you live somewhere else?

1) I live with both my mom and my dad
2) I live with my mom only
3) I live with my dad only
4) I live with other relatives (specify) _____
5) I live with a foster family
6) I live with my spouse/partner/girlfriend/boyfriend
7) I am living with friends
8) I live by myself
9) Other (specify) _____
10) Refused

A2. To the best of your knowledge, what is your mother doing now? For example, does she have a full-time job, a part-time job, is she unemployed, does she go to school or does she stay at home? Please let us know all the things she is doing.
***INTERVIEWER:* CIRCLE ALL THAT APPLY:**

1) Full-time job
2) Part- time job
3) Full-time student
4) Part-time student
5) Unemployed (looking for work)
6) Laid off
7) On social assistance/welfare
8) Retired
9) Homemaker (stays at home)
98) Don't know
99) Refused
10) Other (specify): _____
_____
_____

A3. To the best of your knowledge, what is your father doing now? For example, does he have a full-time job, a part-time job, is he unemployed, does he go to school or does he stay at home? Please let us know all the things he is doing. *INTERVIEWER: CIRCLE ALL THAT APPLY:*

1) Full-time job
2) Part- time job
3) Full-time student
4) Part-time student
5) Unemployed (looking for work)
6) Laid off
7) On social assistance/welfare
8) Retired
9) Homemaker (stays at home)
98) Don't know
99) Refused
10) Other (specify): _____

_____

_____

A4. What is the highest level of education that you have completed?

0) No formal schooling
1) Some primary school
2) Completed primary school
3) Some secondary school
4) Completed secondary school
5) Some college
6) College diploma/certificate
7) Some university
8) University degree (bachelor's)
9) Graduate or professional Degree
99) Refused
10) Other (specify) _____

A5. What were you doing for most of the past year? *INTERVIEWER: CIRCLE ALL THAT APPLY:*

1) Working full-time
2) Working part-time
3) Unemployed – looking for work
4) Not working – not looking for work
5) Student (full-time)
6) Student (part-time)
7) Homemaker (housewife/husband)
9) Disabled – unable to work
10) Hustling
11) Other (specify)_____
99) Refused to answer

A6. What are you doing currently? *INTERVIEWER: CIRCLE ALL THAT APPLY:*

1) Working full-time
2) Working part-time
3) Unemployed – looking for work
4) Not working – not looking for work
5) Student (full-time)
6) Student (part-time)
7) Homemaker (housewife/husband)
9) Disabled – unable to work
10) Hustling
11) Other (specify)_____
99) Refused to answer

A7. The following statements are about relationships in your family. For each of the following, please tell me whether you think the statement is very true, true, not true, or not true at all.

	Statement	Very True	True	Not Sure	Not True	Not True at all
A	Planning activities for my family is difficult.	1	2	3	4	5
B	In times of crisis we can turn to each other for help or support.	1	2	3	4	5
C	We cannot talk to each other about the sadness we feel.	1	2	3	4	5
D	We avoid discussing our fears or concerns.	1	2	3	4	5
E	We express our feelings to each other.	1	2	3	4	5
F	We are able to make decisions about how to solve problems.	1	2	3	4	5
G	We don't get along well with each other.	1	2	3	4	5
H	There is a lot of love in my family.	1	2	3	4	5
I	I like being with the people in my family.	1	2	3	4	5
J	Other families often seem much happier than we are.	1	2	3	4	5

A8. The following statements are about relationships and the support that you get from others including family, friends, social workers, teachers, religious leaders, and others. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	If something went wrong no one would help me.	1	2	3	4	5
B	I have family and friends who make me feel safe, secure and happy.	1	2	3	4	5
C	There is someone I trust who I would turn to for advice if I were having problems.	1	2	3	4	5
D	There is no one I feel comfortable talking about my problems with.	1	2	3	4	5
E	There are people I can count on in an emergency.	1	2	3	4	5
F	There is no one who shares my interests and concerns.	1	2	3	4	5
G	Sometimes I need a favour but nobody will help me.	1	2	3	4	5
H	I would never ask someone for help.	1	2	3	4	5
I	I am lucky because I have good friends.	1	2	3	4	5
J	I have someone that I can go to for help with school or work.	1	2	3	4	5

A9. If you had a major problem – who would you go to for help or advice? Is there anyone else? *(Interviewer: We are looking for relationship, not names.)*

A10. How close are you to your mother? Would you say:

1) Very close
2) Close
3) Not very close
4) Not close at all
5) Don't know/Refused

A11. How close are you to your father? Would you say:

1) Very close
2) Close
3) Not very close
4) Not close at all
5) Don't know/Refused

A12. In general, would you say that your parent(s) or guardian(s) know *where you are* when you are not at home? Would you say:

1) They never know where I am
2) They rarely know where I am
3) They sometimes know where I am
4) They often know where I am
5) They always know where I am
6) Don't know/Refused

A13. In general, would you say that your parent(s) or guardian(s) know *who you are with* when you are not at home? Would you say:

1) They never know who I'm with
2) They rarely know who I'm with
3) They sometimes know who I'm with
4) They often know who I'm with
5) They always know who I'm with
6) Don't know/Refused

A14. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in improving your relationship with your mother? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER: _____

A15. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in improving your relationship with your father? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER: _____

PART B: EDUCATION

B1. Are you currently going to school?

1) Yes – *go to B5*
2) No – *go to B2*
99) Refused – *go to B8*

B2. Why are you not going to school at this time?

1) Graduated
2) Dropped out of school or not interested in school
3) Working – got a job
4) Expelled
5) Suspended
6) Arrested
7) Involved in the justice system (was incarcerated, on parole, etc.)
8) Sick or injured
9) Other (specify): _____
99) Refused

B3. When did you last attend school?

ENTER MONTH _____
ENTER YEAR _____

B4. Do you want to go back to school at some time in the future?

1) Yes – *go to B7*
2) No – *go to B7*
98) Don't know – *go to B7*
99) Refused – *go to B7*

B5. What type of school are you in right now? Is it a:

1) Primary school (Grades 1 to 6)
2) Junior high school (Grades 7 and 8)
3) High school
4) College
5) University
6) Technical school (specify): _____
7) Other (specify): _____

B6. How many credits do you have now?

ENTER NUMBER: _____ (*go to B8*)

B7. When do you plan to go back to school? Would you say:

1) Within the next six months
2) Within the next six to twelve months
3) Within the one to two years
4) More than two years from now
5) Don't know
6) Refused

B8. I'm now going to ask you a few more questions about school. If you are not in school right now, I want you to think about when you were in school. In general, how much do you like school? Would you say:

1) I love school
2) I like school
3) I don't like or dislike school
4) I dislike school
5) I hate school
99) Don't know/refused

B9. In general, what have your grades been like in school? Would you say:

1) Mainly As (80% or above)
2) Mainly Bs (70% to 79%)
3) Mainly Cs (60% to 69%)
4) Mainly Ds (50% to 59%)
5) Mainly Fs (mainly failing grades below 50%)
98) Don't know/Don't remember
99) Refused

B10. In your opinion, are you a very good student, a good student, an average student or a poor student?

1) A very good student
2) A good student
3) An average student
4) A poor student
99) Don't know/Refused

B11. How many times did the following things happen to you during the last six months (that you were in school)?

		Never	1-2 times	3-5 times	6-9 times	10+ times	Refused/DK
A	I was late for school	1	2	3	4	5	6
B	I cut or skipped class	1	2	3	4	5	6
C	I was absent from school	1	2	3	4	5	6
D	I got in trouble for not following school rules	1	2	3	4	5	6
E	I was given a detention	1	2	3	4	5	6

B12. Have you ever been suspended from school? If yes, how many times in your life have you been suspended? Would you say:

1) No – has never been suspended – ***go to B16***
2) Once or twice
3) Three to five times
4) Six to nine times
5) Ten times or more
99) Don't know/Refused

B13. When was the last time that you were suspended? Was it:

1) Within the past month
2) 1-3 months ago
3) 4-6 months ago
4) 7-12 months ago
5) More than a year ago – *skip to B15*
6) More than two years ago – *skip to B15*
99) Don't know/Can't remember – *skip to B15*

B14. How many times in the past year have you been suspended?

ENTER NUMBER: _____

B15. Think about the last time you were suspended. What were you suspended for? What happened?

B16. The last time you were suspended, how fairly were you treated? Use a scale of 1 to 10, where 1 is "not at all fair" and 10 is "extremely fair".

ENTER NUMBER: _____

B17. Have you ever been expelled from school? If yes, how many times in your life have you been expelled? Would you say:

1) No – has never been expelled – *go to B22*
2) Once or twice
3) Three to five times
4) Six to nine times
5) Ten times or more
99) Don't know/Refused

B18. When was the last time that you were expelled? Was it:

1) Within the past month
2) 1-3 months ago
3) 4-6 months ago
4) 7-12 months ago
5) More than a year ago – *skip to B20*
6) More than two years ago – *skip to B20*
99) Don't know/Can't remember – *skip to B20*

B19. How many times in the past year have you been expelled?

ENTER NUMBER: _____

B20. Think about the last time you were expelled. What were you expelled for? What happened?

B21. The last time you were expelled, how fairly were you treated? Use a scale of 1 to 10, where 1 is "not at all fair" and 10 is "extremely fair".

ENTER NUMBER: _____

B22. How much education or training would you LIKE to get?

1) Less than high school graduation
2) High school graduation or GED
3) Attend a program in a community college or vocational school
4) Complete a program in a community college or vocational school
5) Attend university, but not complete a bachelor's degree
6) Graduate from university with a bachelor's degree
7) Obtain a Master's degree or equivalent
8) Obtain a Ph.D., M.D., or other advanced degree
9) Don't know
10) OTHER _____

B23. As things now stand, how much training or education do you think you will ACTUALLY get?

1) Less than high school graduation
2) High school graduation or GED
3) Attend a program in a community college or vocational school
4) Complete a program in a community college or vocational school
5) Attend university, but not complete a bachelor's degree
6) Graduate from university with a bachelor's degree
7) Obtain a Master's degree or equivalent
8) Obtain a Ph.D., M.D., or other advanced degree
9) Don't know
10) OTHER _____

B24. Have you participated in any extracurricular school activities in the last six months (that you were in school)? This includes things like school sports, student government, school choir, school service clubs, and so on.

1) Yes
2) No
3) Refused

B25. Have you won any awards or were you recognized at school for doing well or participating in certain activities in the last six months (that you were in school)? This would include things like participating in a science fair, receiving recognition for good grades or attendance, receiving a community service award, and so on.

1) Yes
2) No
3) Refused

B26. I'm now going to read you a few statements about school and education. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	Continuing with my education will help me get a good job.	1	2	3	4	5
B	I almost always finish my homework.	1	2	3	4	5
C	I don't need a good education for the type of job that I want.	1	2	3	4	5
D	You don't need a good education to make a lot of money.	1	2	3	4	5
E	The people who work hard at school usually finish on top.	1	2	3	4	5
F	People who do good at school are usually nerds.	1	2	3	4	5
G	People who get high marks at school are usually sell-outs.	1	2	3	4	5
H	I can get whatever job I want as long as I work hard at school.	1	2	3	4	5
I	I don't need to stay in school to have a good life.	1	2	3	4	5
J	I admire people who get good marks at school.	1	2	3	4	5
K	School is boring.	1	2	3	4	5
L	I try hard at school.	1	2	3	4	5
M	Homework is a waste of time.	1	2	3	4	5
N	Getting good grades is important to me.	1	2	3	4	5
O	Discrimination makes it difficult for people from my racial group get a good education	1	2	3	4	5

B27. *FOR PIT PARTICIPANTS ONLY:* (*FOR CURRENT STUDENTS ONLY*)**: How helpful do you think the PIT program will be in improving your grades at school? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER: _____

B28. *FOR PIT PARTICIPANTS ONLY:* (*FOR CURRENT STUDENTS ONLY*)**: How helpful do you think the PIT program will be in helping you stay out of trouble at school? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER: _____

PART C: EMPLOYMENT

C1. Do you currently have a job?

1) Yes – ***go to C4***
2) No
3) Refused

C2. Are you currently looking for work? Are you looking for a job?

1) Yes – ***go to C10***
2) No
3) Refused – ***go to C10***

C3. Why aren't you looking for a job at this time?

INTERVIEWER: AFTER THE RESPONDENT ANSWERS THIS QUESTION GO TO C10

C4. What kind of job do you have? Can you describe this job? (*Interviewer – get information on occupation type/job duties.)*

C5. How long have you been working there?

1) Less than a month
2) 1 to 6 months
3) 7 months to 1 year
4) 1 to 2 years
5) 2 or more years

C6. Is this job related to the job you want to have in the future?

1) closely related
2) somewhat related
3) not related at all
4) Don't know/refused

C7. How many hours per week do you usually work at this job?

HOURS PER WEEK: _____

C8. How much do you like your current job? Would you say:

1) I like it very much
2) I like it
3) Neutral
4) I don't like it
5) I don't like it at all
9) Don't know/Refused

C9. Why do you like/dislike your job?

C10. Has there ever been a time when you really wanted a job but you could not find one? Would you say:

1) Never
2) Once or twice
3) Several times
4) Many times
9) Don't know/Refused

C11. People get money in many different ways – jobs, allowance, welfare, hustling. Please explain all the sources of income or the ways you get money. ***(Interviewer probes:*** social assistance, EI, allowance, anything else?)

C12. I want you to think about the future. What is your dream job? (If you could have any type of job what would it be?)

C13. In case this doesn't work out, is there something else you would like to do for work? (What is your back-up plan?)

C14. Based on your current situation, what kind of job can you obtain?

C15. If you had a choice, would you rather work for a large company, a government organization, or would you rather run your own business?

1) I would like to work for a large company
2) I would like to work for the government
3) I would like to run my own business
4) Other (specify): _____
98) Don't know/refused

C16. How hopeful are you that you will eventually get a job that you really like? Use a scale of 1 to 10, where 1 is "not hopeful at all" and 10 is "extremely hopeful".

ENTER NUMBER: _____

C17. I am now going to read you a few statements about yourself. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I don't like it when people tell me what to do.	1	2	3	4	5
B	I want to work hard at my job/career.	1	2	3	4	5
C	I can do any job as long as you give me a chance.	1	2	3	4	5
D	I can't work with other people.	1	2	3	4	5
E	I admire people who make lots of money without working hard.	1	2	3	4	5
F	I would find it difficult to work for someone else.	1	2	3	4	5
G	I admire people who work hard at their jobs.	1	2	3	4	5
H	Sometimes you have to start at the bottom and work your way to the top.	1	2	3	4	5
I	Discrimination makes it difficult for people from my racial group get a good job	1	2	3	4	5

C18. I am now going to read a few more statements. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I don't like dressing up for interviews.	1	2	3	4	5
B	People who work hard for low wages are stupid.	1	2	3	4	5
C	I have the skills I need to get a good job.	1	2	3	4	5
D	I will be willing to keep a job even if my boss gets to tell me what to do.	1	2	3	4	5
E	I need more education before I can get a good job.	1	2	3	4	5
F	I know I can succeed at work.	1	2	3	4	5
G	I would take almost any kind of job to get money.	1	2	3	4	5
H	The only good job is one that pays a lot of money.	1	2	3	4	5
I	Working hard at a job will pay off in the end.	1	2	3	4	5
J	Most jobs are dull and boring.	1	2	3	4	5

C19. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in helping you with your or career or employment goals? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER: _____

C20. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in helping you get a job that you really like? Use a scale of 1 to 10, where 1 is "not helpful at all" and 10 is "extremely helpful".**

ENTER NUMBER _____

PART D: DRUG AND ALCOHOL USE

D1. **I'm now going to ask you a few questions about drugs and alcohol. Remember that your answers are completely confidential. To begin with, how often in the past six months have you smoked cigarettes or tobacco? Would you say....** *INTERVIEWER: REPEAT LINE OF QUESTIONING FOR EACH OF THE SUBSTANCES LISTED BELOW*:

	SUBSTANCE	Never	Once or Twice	Less than Once per Month	About Once per Month	A few times per month	About once per week	More than Once Per week	Every Day or Almost Every Day
A	Smoked cigarettes or tobacco	0	1	2	3	4	5	6	7
B	Consumed beer or wine	0	1	2	3	4	5	6	7
C	Consumed hard liquor like rum or vodka	0	1	2	3	4	5	6	7
D	Smoked marijuana, weed or hash	0	1	2	3	4	5	6	7
E	Used powdered cocaine	0	1	2	3	4	5	6	7
F	Used crack cocaine	0	1	2	3	4	5	6	7
G	Used heroin	0	1	2	3	4	5	6	7
H	Used ecstasy	0	1	2	3	4	5	6	7
I	Used LSD or Acid	0	1	2	3	4	5	6	7
J	Used methamphetamine	0	1	2	3	4	5	6	7
K	Used mushrooms	0	1	2	3	4	5	6	7

D2. **In the past six months have you used any other type of drug that I have not mentioned?**

1) Yes
2) No – ***go to D4***

Interviewer: if respondent has never used any drugs or alcohol, skip to Section E.

D3. **What other drugs have you used in the past six months? How often did you use (TYPE OF DRUG) in the past six months? (*INTERVIEWER: REPEAT THIS QUESTION FOR EACH OF THE DRUGS LISTED BY THE RESPONDENT.)***

	SUBSTANCE	Never	Once or Twice	Less than Once per Month	About Once per Month	A few times per month	About once per week	More than Once Per week	Every Day or Almost Every Day
A	Other_____	0	1	2	3	4	5	6	7
B	Other_____	0	1	2	3	4	5	6	7
C	Other_____	0	1	2	3	4	5	6	7
D	Other_____	0	1	2	3	4	5	6	7

D4. **(*Interviewer: If they reported consuming beer, wine, or hard liquor, ask:)* In your opinion, how often have you been drunk or intoxicated by alcohol in the past six months?**

0) Never
1) Once or twice
2) Less than once a month
3) About once a month
4) A few times a month
5) About once a week
6) More than once a week
7) Every day or almost every day
98) Don't know
99) Refused

D5. **(*Interviewer: If they reported using any drugs, ask:)* In your opinion, how often have you been high on drugs in the past six months?**

0) Never
1) Once or twice
2) Less than once a month
3) About once a month
4) A few times a month
5) About once a week
6) More than once a week
7) Every day or almost every day
98) Don't know
99) Refused

D6. **What time of day do you most often use? (Please select all that apply.)**

1) At night
2) Afternoons/after school
3) Before or during school or work
4) In the morning or when I first wake up
5) I often get up during my sleep to use alcohol or drugs
6) Other _____

D7. Why do you use, most of the time?

SECTION E: MENTAL HEALTH, SELF-CONTROL, AND OTHER SCALES

E1. Now I am going to read out statements about how you react and do things in everyday life. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree:

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I often act on the spur of the moment without stopping to think.	1	2	3	4	5
B	I do not devote much thought and effort to preparing for the future.	1	2	3	4	5
C	I often do whatever brings me pleasure here and now, even at the cost of some distant goal.	1	2	3	4	5
D	I am more concerned with what happens to me in the short run than in the long run.	1	2	3	4	5
E	I frequently try to avoid projects that I know will be difficult.	1	2	3	4	5
F	When things get complicated, I tend to quit or withdraw.	1	2	3	4	5
G	The things in life that are easiest to do bring me the most pleasure.	1	2	3	4	5
H	I dislike really hard tasks that stretch my abilities to the limit.	1	2	3	4	5
I	I like to test myself every now and then by doing something a little risky.	1	2	3	4	5
J	Sometimes I will take a risk for the fun of it.	1	2	3	4	5
K	I sometimes find it exciting to do things for which I might get into trouble.	1	2	3	4	5
L	Excitement and adventure are more important to me than security.	1	2	3	4	5
M	If I had a choice, I would almost always rather do something physical than something mental.	1	2	3	4	5
N	I almost always feel better when I am on the move than when I am sitting and thinking.	1	2	3	4	5
O	I like to get out and do things more than I like to read or contemplate ideas.	1	2	3	4	5
P	I seem to have more energy and a greater need for activity than most other people my age.	1	2	3	4	5
Q	I try to look out for myself first, even if it means making things difficult for other people.	1	2	3	4	5
R	I'm not very sympathetic to other people when they are having problems.	1	2	3	4	5
S	If things I do upset people, it's their problem, not mine.	1	2	3	4	5
T	I will try to get the things I want even when I know it is causing problems for other people.	1	2	3	4	5
U	I lose my temper pretty easily.	1	2	3	4	5
V	Oftentimes, when I'm angry at people, I feel more like hurting them than talking to them about why I am angry.	1	2	3	4	5
W	When I'm really angry, other people better stay away from me.	1	2	3	4	5
X	When I have a serious disagreement with someone, it's usually hard for me to talk calmly about it without getting upset.	1	2	3	4	5
Y	I am good at starting things but not very good at finishing them.	1	2	3	4	5

E2. Now I'm going to ask you some questions about how you have been feeling over the last 30 days. For each of the following, please tell me whether you feel this way never, rarely, sometimes, often, or always. In the last 30 days, how often …

		Never	Rarely	Sometimes	Often	Always
A	Were you very sad?	1	2	3	4	5
B	Were you grouchy or irritable, or in a bad mood?	1	2	3	4	5
C	Did you feel hopeless about the future?	1	2	3	4	5
D	Did you feel like not eating or eating more than usual?	1	2	3	4	5
E	Did you sleep a lot more or a lot less than usual?	1	2	3	4	5
F	Did you have difficulty concentrating on your (school) work?	1	2	3	4	5

E3. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I have little control over the things that happen to me.	1	2	3	4	5
B	There is really no way I can solve some of the problems that I have.	1	2	3	4	5
C	There is little I can do to change many of the important things in my life.	1	2	3	4	5
D	I often feel helpless in dealing with the problems of life.	1	2	3	4	5
E	Sometimes I feel that I'm being "pushed around" in life.	1	2	3	4	5
F	What happens to me in the future mostly depends on me.	1	2	3	4	5
G	I can do just anything I really set my mind to do.	1	2	3	4	5

E4. Now I'm going to ask you some questions about how you might act or feel. For each of the following, please tell me whether you act or feel this way never, rarely, sometimes, often, or always. How often do you …

		Never	Rarely	Sometimes	Often	Always
A	Feel easily annoyed or irritated?	1	2	3	4	5
B	Have temper outbursts you cannot control?	1	2	3	4	5
C	Have urges to beat, injure, or harm someone?	1	2	3	4	5
D	Have urges to break or smash things?	1	2	3	4	5
E	Get into arguments?	1	2	3	4	5
F	Shout or throw things?	1	2	3	4	5

E5. Below is a list of statements dealing with your general feelings about yourself. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I feel that I'm a person of worth, at least on an equal par with others.	1	2	3	4	5
B	I feel that I have a number of good qualities.	1	2	3	4	5
C	All in all, I am inclined to feel that I'm a failure.	1	2	3	4	5
D	I am able to do things as well as most other people.	1	2	3	4	5
E	I feel I do not have much to be proud of.	1	2	3	4	5
F	I take a positive attitude toward myself.	1	2	3	4	5
G	On the whole, I am satisfied with myself.	1	2	3	4	5
H	I wish I could have more respect for myself.	1	2	3	4	5
I	I certainly feel useless at times.	1	2	3	4	5
J	At times I think that I am no good at all.	1	2	3	4	5

E6. Now I'm going to ask you some questions about how confident you are that can do certain things. For each of the following, please tell me whether you are very confident, somewhat confident, not very confident, or not at all confident. How confident are you that you can…

		Very confident	Somewhat confident	Not sure	Not very confident	Not at all confident
A	Stay out of physical fights?	1	2	3	4	5
B	Stay out of arguments?	1	2	3	4	5
C	Understand another person's point of view?	1	2	3	4	5
D	Calm down when you are mad?	1	2	3	4	5
E	Talk out a disagreement?	1	2	3	4	5

E7. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

		Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	Things just won't work out the way I want them to.	1	2	3	4	5
B	When things are going badly, I know that they won't be bad all of the time.	1	2	3	4	5
C	I don't have good luck and there's no reason to think I will when I grow up.	1	2	3	4	5
D	All I can see ahead of me are bad things, not good things.	1	2	3	4	5
E	The future appears bright and exciting.	1	2	3	4	5
F	There's no use in really trying to get something I want because I probably won't get it.	1	2	3	4	5
G	I might as well give up because I can't make things better for myself.	1	2	3	4	5
H	I will have more good times than bad times.	1	2	3	4	5

E8. *PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in helping you to learn how to control your anger and resolve conflicts without violence? Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".**

ENTER NUMBER: _____

E9. We have now come to the end of this interview. Thank you very much for your participation. Do you have anything else you would like to say or anything else you would like to tell us?

EVALUATION INTAKE INTERVIEW # TWO:
PRE-TEST RISK FACTORS

(Includes measures of criminal victimization, offending, attitudes, friends, contact with justice system, expectations for the PIT program)

Thank you again for agreeing to participate in this second interview. Remember this is not a test. There are no right or wrong answers. We just want to hear about your life. We want you to just tell us about your experiences and about how you feel about things lately. You do not have to answer any questions that you do not want to answer. The interview is also completely private and confidential.

Please answer all the questions as honestly as possible. If you are not honest we will not know how you are really feeling and the program we develop will not reflect your opinions and concerns.

If you have any questions during the interview please just stop me and ask me. Do you have any questions before we get started? Let's get started – OKAY?

Interviewer name: _____

RESPONDENT NUMBER: _____

Respondent age: _____

Respondent gender: _____

Youth's home location (select one):

e. Jane and Finch
f. Jamestown/Rexdale
g. Weston/Mt. Dennis
h. Lawrence Heights

Location of interview (select one and specify where, i.e., coffee shop, JVS office, etc.):

e. Jane and Finch (specify: _____)
f. Jamestown/Rexdale (specify: _____)
g. Weston/Mt. Dennis (specify: _____)
h. Lawrence Heights (specify: _____)

Today's date: _____

Interview start time: _____

PART G: VICTIMIZATION

G1. Now I want you to think about things that may have happened to you over the past six months.

	TYPE OF VICTIMIZATION	Never	Once	Twice	3- 5 Times	6-9 Times	10+ Times
A	How many times in the past six months has someone robbed you or taken money or things from you by threatening you or by using physical force?	0	1	2	3	4	5
B	How many times in the past six months has someone robbed you or taken money or other things from you by using a weapon like a bat or a knife?	0	1	2	3	4	5
C	How many times in the past six months has someone stolen money or things from you without you knowing worth less than $50.00?	0	1	2	3	4	5
D	How many times in the past six months has someone stolen money or things from you without you knowing worth over $50.00?	0	1	2	3	4	5
E	How many times in the past six months has someone deliberately damaged your property, clothes or possessions?	0	1	2	3	4	5
F	How many times in the past six months has someone seriously threatened to hurt you or injure you?	0	1	2	3	4	5
G	How many times in the past six months has someone threatened you with a weapon like a knife or a bat?	0	1	2	3	4	5
H	How many times in the past six months has someone assaulted you by punching, kicking, or slapping you?	0	1	2	3	4	5
I	How many times in the past six months has someone attacked you with a weapon like a knife or a bat?	0	1	2	3	4	5
J	How many times in the past six months has someone called you names or teased you in a way that it bothered you or hurt your feelings?	0	1	2	3	4	5
K	How many times in the past six months has someone touched you in a sexual way when you did not want them to?	0	1	2	3	4	5
L	How many times in the past six months has someone forced you to have sex when you did not want to?	0	1	2	3	4	5
M	How many times in the past six months have you been attacked by a group or gang?	0	1	2	3	4	5
N	How many times in the past six months has someone threatened you with a gun or pointed a gun at you?	0	1	2	3	4	5
O	How many times in the past six months have you been shot or been shot at?	0	1	2	3	4	5

G2. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in preventing you from becoming the victim of a violent crime? Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".**

ENTER NUMBER: _____

PART H: OFFENDING

H1. Now I want you to think about things that you may have done in the past six months. How often in the past six months have you:

	TYPE OF OFFENDING	Never	Once	Twice	3-5 Times	6-9 Times	10+ Times
A	Stolen or tried to steal a bicycle	0	1	2	3	4	5
B	Stolen or tried to steal a car, motorcycle or other vehicle	0	1	2	3	4	5
C	Broken into a car to steal something	0	1	2	3	4	5
D	Broken into a home or business to steal something	0	1	2	3	4	5
E	Damaged or destroyed, on purpose, someone else's property	0	1	2	3	4	5
F	Stolen food, drinks or candy from a store or cafeteria without paying	0	1	2	3	4	5
G	Stole money or things worth less than $100	0	1	2	3	4	5
H	Stole money or things worth more than $100	0	1	2	3	4	5
I	Used the bus or the subway without paying	0	1	2	3	4	5
J	Made money by using prostitutes (pimping)	0	1	2	3	4	5
K	Got paid to have sex with someone	0	1	2	3	4	5
L	Used someone else's credit card or ATM card without their permission	0	1	2	3	4	5
M	Organized an illegal gambling event	0	1	2	3	4	5
N	Grew/made illegal drugs (ran a grow-op)	0	1	2	3	4	5
O	Smuggled or sold guns	0	1	2	3	4	5
P	Smuggled or sold drugs	0	1	2	3	4	5
Q	Tagged someone else's property or left graffiti on it	0	1	2	3	4	5
R	Fenced, received, possessed, or sold stolen property	0	1	2	3	4	5
S	Cheated someone by selling them something that was worthless or worth much less than what you said it was	0	1	2	3	4	5

H2. How often in the past six months have you:

	TYPES OF OFFENDING	Never	Once	Twice	3 to 5 Times	6 to 9 Times	10 Times or More
A	Verbally threatened to hurt or harm someone	0	1	2	3	4	5
B	Been in a physical fight with another individual	0	1	2	3	4	5
C	Been in a physical fight where your group of friends fought another group of people	0	1	2	3	4	5
D	Carried a knife in public	0	1	2	3	4	5
E	Threatened someone with a knife or bat	0	1	2	3	4	5
F	Attacked someone using a knife or a bat	0	1	2	3	4	5
G	Carried a gun in public	0	1	2	3	4	5
H	Threatened someone with a gun	0	1	2	3	4	5
I	Shot at someone with a gun	0	1	2	3	4	5
J	Took money or things from someone by using verbal threats or physical force (but not a weapon)	0	1	2	3	4	5
K	Took money or things from someone by using a weapon like a knife or gun	0	1	2	3	4	5
L	Forced someone to have sex against their will	0	1	2	3	4	5

H3. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in preventing you from engaging in property crime? By property crime we mean things like stealing or selling drugs. Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".**

ENTER NUMBER: _____

H4. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in preventing you from engaging in violent crime? By violent crime we mean things like threatening people, fighting or using weapons. Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".**

ENTER NUMBER: _____

PART I: ATTIDUES TOWARDS CRIME, GANGS AND THE LAW

I1. I'm now going to read you a few statements about fighting and other types of violence. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	It is okay to fight someone if they have insulted or disrespected your family or friends.	1	2	3	4	5
B	It is okay to fight someone if they have insulted or disrespected you.	1	2	3	4	5
C	I admire people who don't back down when someone insults or threatens them.	1	2	3	4	5
D	Sometimes people need to carry a knife or a gun for protection.	1	2	3	4	5
E	People who snitch to the police deserve to be beaten up or punished.	1	2	3	4	5
F	It is okay to fight someone who has threatened or attacked your family or friends.	1	2	3	4	5
G	It is okay to fight someone if they threaten or attack you.	1	2	3	4	5
H	People who are afraid to fight are cowards or punks.	1	2	3	4	5
I	It is okay to fight to protect your territory or neighbourhood.	1	2	3	4	5
J	I admire people who are able to walk away from fights.	1	2	3	4	5

I2. I'm now going to read you a few statements about the law, the courts and the police. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	All laws deserve our respect.	1	2	3	4	5
B	Laws exist to protect all people.	1	2	3	4	5
C	Innocent people are almost never arrested.	1	2	3	4	5
D	The police almost never help people	1	2	3	4	5
E	Life would be more difficult if we did not have the police	1	2	3	4	5
F	The police do a good job of keeping my neighbourhood safe	1	2	3	4	5
G	The police never snitch on another cop – even if the cop has broken the law.	1	2	3	4	5
H	The police in my neighbourhood are friendly and easy to talk to.	1	2	3	4	5
I	The police will protect you from criminals if you report a crime.	1	2	3	4	5

I3. I'm now going to read you a few statements about crime and obeying the law. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	Many successful people break the law to get ahead.	1	2	3	4	5
B	Sometimes it is okay for poor people to steal from rich people.	1	2	3	4	5
C	Sometimes selling drugs is the only way for a poor person to make good money.	1	2	3	4	5
D	I would rather make lots of money hustling on the streets than take a low paying job.	1	2	3	4	5
E	Criminals who make lots of money get more respect than people who have low paying jobs.	1	2	3	4	5
F	Sometimes people like me need to break the law to get ahead.	1	2	3	4	5
G	Engaging in crime is more fun and exciting than taking a regular job.	1	2	3	4	5
H	Engaging in crime can ruin your life.	1	2	3	4	5
I	There is never an excuse for breaking the law.	1	2	3	4	5
J	I don't care if other people think I'm a criminal.	1	2	3	4	5
K	It is okay to engage in crime to get money for your family.	1	2	3	4	5

I4. Now I want you to think about your friends or the people you hang out with. How many friends would you say you have? (How many people do you hang out with?)

NUMBER: _____

I5. How many of these people are NOT involved in gangs in any way?

NUMBER: _____

I6. In the past six months, how often have you spent time with these people? Would you say:

1) Never
2) Once or twice
3) Less than once a month
4) About once a month
5) A few times a month
6) About once a week
7) More than once a week
8) Every day or almost every day
9) Don't know
10) Refused

I7. In the past six months, how often have you spent time or hung out with friends who ARE gang members or involved in a gang in some way? Would you say:

1) Never
2) Once or twice
3) Less than once a month
4) About once a month
5) A few times a month
6) About once a week
7) More than once a week
8) Every day or almost every day
9) Don't know
10) Refused

I8. Is there anyone in your life who you admire or look up to who is NOT in a gang?

1) Yes
2) No – *go to I10*
3) Don't know/Refused

I9. Who is this person or these people? *(Interviewer – we are looking for relationship, not names)*

I10. In the last six months, how often do you spend time on the following activities outside of school?

	Never	Once or twice	Less than once a month	About once a month	A few times a month	About once a week	More than once a week	Every day or almost every day
Working on hobbies, arts, or crafts	1	2	3	4	5	6	7	8
Volunteering or performing community service	1	2	3	4	5	6	7	8
Doing music, art, language, dance, or taking classes on these	1	2	3	4	5	6	7	8
Playing sports or taking sports lessons	1	2	3	4	5	6	7	8
Participating in workshops (e.g., for careers)	1	2	3	4	5	6	7	8
Participating in leadership building activities	1	2	3	4	5	6	7	8
Participating in religious groups	1	2	3	4	5	6	7	8
Other specify:_____)	1	2	3	4	5	6	7	8

I11. I'm now going to read you a few statements about gangs and what it means to be part of a gang. For each of the following, please tell me whether you think the statement is very true, true, not true, or not true at all.

	Statement	Very True	True	Not Sure	Not True	Not True at All
A	In my neighbourhood, it is better to be in a gang than not be in a gang.	1	2	3	4	5
B	Gang members always have each other's back.	1	2	3	4	5
C	In my neighbourhood, people in gangs get more respect than people who are not in gangs.	1	2	3	4	5
D	In my neighbourhood, people in gangs make more money than people with regular jobs.	1	2	3	4	5
E	Gang members only care about themselves; they don't really care about the other people in the gang.	1	2	3	4	5
F	When you are in a gang you will always have love and support.	1	2	3	4	5
G	Being in a gang can ruin your life.	1	2	3	4	5
H	It is hard to get a good education if you are in a gang.	1	2	3	4	5
I	It is hard to get a good job if you are in a gang.	1	2	3	4	5
J	Many people in gangs eventually get hurt or killed by other gangs.	1	2	3	4	5
K	Most people in gangs will eventually get arrested and go to jail.	1	2	3	4	5
L	Being in a gang is the only family I got.	1	2	3	4	5
M	Being in a gang is the only way I can get money and become successful.	1	2	3	4	5

I12. *FOR PIT PARTICIPANTS ONLY:* How helpful do you think the PIT program will be in helping you stay away from gangs and the people in them? Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".

ENTER NUMBER: _____

SECTION J: CONTACT WITH THE JUSTICE SYSTEM

J1. In the past six months, how often have the police stopped you and asked you questions?

NUMBER OF TIMES: _____

J2. In the past six months, how often have the police searched you, your vehicle, or asked to empty your pockets or look in your bag?

NUMBER OF TIMES: _____

J3. In the past six months, when you have dealt with the police, how fairly were you treated? Use a scale of 1 to 10, where 1 is "not at all fair" and 10 is "extremely fair".

NUMBER: _____

J4. In the past six months, when you have dealt with the police, how respectfully were you treated? Use a scale of 1 to 10, where 1 is "not at all respectfully" and 10 is "extremely respectfully".

NUMBER: _____

J5. In your life, have you ever been arrested by the police or charged with a crime?

1) Yes
2) No – *go to J20*
98) Don't know – *go to J20*
99) Refused – *go to J20*

J6. In your life, how many times have you been arrested by the police or charged with a crime?

NUMBER OF TIMES: _____

J7. Have you been arrested or charged with a crime in the past six months?

1) Yes
2) No – *go to J9*
98) Don't know – *go to J9*
99) Refused – *go to J9*

J8. How many times in the past six months have you been arrested by the police or charged with a crime?

NUMBER OF TIMES: _____

J9. What types of things have you been arrested for? What types of things have the police charged you with?

J10. Have you ever pled guilty or been convicted of a crime in youth court?

1) Yes
2) No
98) Don't know
99) Refused

J11. Have you ever pled guilty or been convicted of a crime in adult court?

1) Yes
2) No
98) Don't know
99) Refused

J12. Have you ever served time in a youth detention facility or a youth correctional facility?

1) Yes
2) No – *go to J15*
98) Don't know – *go to J15*
99) Refused – *go to J15*

J13. When was the last time you were in a youth detention facility or a youth correctional facility? Would you say:

1) Currently in open custody
2) Within the past six months (0-6 months ago)
3) Within the past year (7-12 months ago)
4) Within the past 2 years (13-24 months ago)
5) Within the past 3 years (25-36 months ago)
6) Within the past 4 years (37-48 months ago)
7) Within the past 5 years (49-60 months ago)
8) More than five years ago (61+ months ago)
98) Don't know
99) Refused

J14. Overall, in your life, how much time would you say that you have spent in youth detention or correctional facilities? How many days, months or years?

TIME SPENT IN YOUTH FACILITIES: _____
SPECIFY DAYS, MONTHS, OR YEARS.

J15. *(INTERVIEWER: FOR YOUTH AGED 18 AND UP ONLY):* **Have you ever served time in an adult detention facility or an adult correctional facility?**

1) Yes
2) No – *go to J18*
8) Don't know – *go to J18*
9) Refused – *go to J18*

J16. *(INTERVIEWER: FOR YOUTH AGED 18 AND UP ONLY):* **When was the last time you were in an adult detention facility or adult correctional facility? Would you say:**

1) Within the past six months (0-6 months ago)
2) Within the past year (7-12 months ago)
3) Within the past 2 years (13-24 months ago)
4) Within the past 3 years (25-36 months ago)
5) Within the past 4 years (37-48 months ago)
6) Within the past 5 years (49-60 months ago)
7) More than five years ago (61+ months ago)
98) Don't know
99) Refused

J17. *(INTERVIEWER: FOR YOUTH AGED 18 AND UP ONLY):* **Overall, in your life, how much time would you say that you have spent in adult detention or correctional facilities? How many days, months or years?**

TIME SPENT IN YOUTH FACILITIES: _____
SPECIFY DAYS, MONTHS, OR YEARS.

J18. In your opinion, have you ever been falsely arrested or charged with a crime that you did not commit? (Have you ever been charged with a crime when you were really innocent?)

1) Yes
2) No – *go to J20*
8) Don't know – *go to J20*
9) Refused – *go to J20*

J19. How many times in your life have you been falsely arrested or charged with a crime that you did not commit?

NUMBER OF TIMES: _____

J20. *FOR PIT PARTICIPANTS ONLY:* **How helpful do you think the PIT program will be in helping you avoid trouble with the police and the courts? Use a scale of 1 to 10, where 1 is "not at all helpful" and 10 is "extremely helpful".**

ENTER NUMBER: _____

SECTION K: ATTITUDES TOWARDS THE POLICE AND JUSTICE SYSTEM

K1. Now I'm going to read you a few statements about the police. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	I trust the police.	1	2	3	4	5
B	I have confidence in the police.	1	2	3	4	5
C	If I had a problem I would go to the police for help.	1	2	3	4	5
D	The police care about the people who live in my community.	1	2	3	4	5
E	I have a lot of respect for the police.	1	2	3	4	5
F	Police often abuse their power.	1	2	3	4	5
G	The police treat young people worse than older people.	1	2	3	4	5
H	The police treat poor people worse than rich people.	1	2	3	4	5
I	The police treat people from my racial group worse than people from other racial groups	1	2	3	4	5
J	Police often use violent or unfair methods to get information.	1	2	3	4	5
K	If it's your word against the police – the police will always win.	1	2	3	4	5
L	Many police officers are engaged in criminal activity.	1	2	3	4	5

K2. Have you ever had a bad or negative experience with the police? If yes, in your opinion, what is the worst or most negative experience you have ever had with the police? Please describe this experience.

K3. Have you ever had a good or positive experience with the police? If yes, in your opinion, what is the best or most positive experience you have ever had with the police? Please describe this experience.

K4. Now I'm going to read you a few statements about the Canadian court system. For each of the following, please tell me whether you strongly agree, agree, disagree or strongly disagree.

	Statement	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
A	The courts treat everyone equally.	1	2	3	4	5
B	In general, people who work in the courts are honest.	1	2	3	4	5
C	The courts treat rich people better than poor people.	1	2	3	4	5
D	The courts will believe what the police say more than what regular people say.	1	2	3	4	5
E	The courts treat people from my racial group worse than other people.	1	2	3	4	5
F	The courts treat everyone fairly.	1	2	3	4	5
G	Overall, the courts make Canada a better place to live.	1	2	3	4	5
H	The law should be obeyed.	1	2	3	4	5
I	Judges don't really care about what happens to people charged with a crime.	1	2	3	4	5
J	Lawyers don't really care what happens to people charged with a crime.	1	2	3	4	5
K	It is better to plead guilty – even if you are innocent.	1	2	3	4	5
L	In court nobody would believe what I have to say.	1	2	3	4	5

SECTION L: NATURE OF PROGRAM PARTICIPATION

CONTROL GROUP MEMBERS – SKIP TO QUESTION L17

I am going to conclude this interview by asking you a few questions about the PIT Program.

L1. Do you want to participate in this program or do you feel that you are being forced to participate?

1) I want to participate – ***go to L2***
2) I don't want to participate/I am being forced to participate – ***go toL3***
98) Don't know – ***go to L4***
99) Refused – ***go to L4***

L2. Why do you WANT to be part of this program? (Why do you want to be here?)

INTERVIEWER: AFTER RECORDING ANSWER GO TO L4.

L3. Why do you NOT want to be part of this program? (Why do you feel that you are being FORCED to be here?)

L4. What do you expect to get out of this program? What do you think the benefits of participation might be?

L5. What do you think will happen when the program starts? What types of things do you think you will do? What types of activities will be involved?

L6. Do your parents or guardians know that you are taking part in this program?

1) Yes – *go to L7*
2) No – *go to L8*
98) Don't know– *go to L10*
99) Refused– *go to L10*

L7. Are your parents or guardians supportive of the fact that you are taking this program? Would you say that they are:

1) Very supportive – *go to L10*
2) Supportive – *go to L10*
3) Neutral – *go to L10*
4) Unsupportive – *go to L10*
5) Very unsupportive – *go to L10*
98) Don't know – *go to L10*
99) Refused – *go to L10*

L8. Why don't your parents know that you are in this program?

L9. If your parents or guardians DID know that you were in this program do you think they would they be:

1) Very supportive
2) Supportive
3) Neutral
4) Unsupportive
5) Very unsupportive
98) Don't know
99) Refused

L10. Do any of your friends know that you are in this program? Would you say that:

1) All of my friends know that I am in this program – *go to L13*
2) Some of my friends know I am in this program – *go to L13*
3) None of my friends know I am in this program – *go to L11*
98) Don't know – *go to L14*
99) Refused – *go to L14*

L11. Why don't your friends know that you are in this program?

L12. If your friends knew that you were in this program, do you think they would be supportive or unsupportive? Would they be:

1) Very supportive – *go to L14*
2) Supportive – *go to L14*
3) Neutral – *go to L14*
4) Unsupportive – *go to L14*
5) Very unsupportive – *go to L14*
98) Don't know – *go to L14*
99) Refused – *go to L14*

L13. Think about the friends who know that you are in the program. Are they supportive of your participation in the program or are they unsupportive? Would you say that they are:

1) Very supportive
2) Supportive
3) Neutral
4) Unsupportive
5) Very unsupportive
98) Don't know
99) Refused

L14. Has anybody discouraged you or tried to prevent you from taking part in the program?

1) Yes
2) No – *go to L16*
98) Don't know – *go to L16*
99) Refused – *go to L16*

L15. Who has tried to discourage or prevent you from participating in this program? We don't want to know their names – just who they are. For example, are they a friend or a family member?

L16. How hopeful are you that the PIT program will help to improve your life or make your life better? Use a scale of 1 to 10, where 1 is "not at all hopeful" and 10 is "extremely hopeful".

ENTER NUMBER: _____

L17. Are you currently involved in any crime prevention or anti-violence programs or activities (FOR PIT PARTICIPANTS, ADD "besides the PIT program")? If yes, what are the names of these programs? How would you describe these programs? How long have you been in these programs?

L18. We have now come to the end of this interview. Thank you very much for your participation. Do you have anything else you would like to say or anything else you would like to tell us?

Interview stop time: _____

APPENDIX D – CHAPTER FOUR VARIABLE CODING

DEPENDENT VARIABLES

Police Performance, Trust, and Confidence Index (Mean 24.55; Range 10 – 49; alpha=.88)
Respondents were asked to indicate their level of agreement with the following statements: (1) the police almost never help people; (2) life would be more difficult if we did not have the police; (3) the police do a good job of keeping my neighbourhood safe; (4) the police in my neighbourhood are friendly and easy to talk to; (5) the police will protect you from criminals if you report a crime; (6) I trust the police; (7) I have confidence in the police; (8) if I had a problem I would go to the police for help; (9) the police care about the people who live in my community; (10) I have a lot of respect for the police If the respondents indicated that they 'strongly disagree' they were given a score of 1; if they reported that they 'disagree' they were given a score of 2; respondents who indicated that they were 'not sure' were given a score of 3; if they indicated that they 'agree' they were given a score of 4; and respondents who indicated that they 'strongly agree' were given a score of 5. The scores in the ten items were then combined into a single measure to create the Police Performance, Trust, and Confidence Index; the higher respondents scored on the scale the higher their evaluation of police performance and level of trust and confidence in the police (Mean 24.55; Range 10 – 49; alpha=.88).

Police Bias and Corruption Index (Mean 15.98; Range 8 – 33; alpha=.79)
Respondents were asked to indicate their level of agreement with the following statements: (1) the police treat young people worse than older people; (2) the police treat poor people worse than rich people; (3) the police treat people from my racial group worse than people from other racial groups; (4) police often use violent or unfair methods to get information; (5) if it's your word against the police – the police will always win; (6) many police officers are engaged in criminal activity; (7) the police never snitch on another cop –even if the cop has broken the law; and (8) the police often abuse their power. If the respondents indicated that they 'strongly disagree' they were given a score of 1; if they reported that they 'disagree' they were given a score of 2; respondents who indicated that they were 'not sure' were given a score of 3; if they indicated that they 'agree' they were given a score of 4; and respondents who indicated that they 'strongly agree' were given a score of 5. The scores in the eight items were then combined into a single measure to create the Police Bias and Corruption Index; the higher respondents scored on the scale the more bias and corruption they perceived (Mean 15.98; Range 8 – 33; alpha=.79).

INDEPENDENT VARIABLES:

Age: Age is an interval variable. Age is measured in years ranging from 12 to 26 years. Mean age=17.98 yrs; Median age=18 yrs; Standard Deviation=3.015 yrs.

Age at Immigration: Age at immigration is an interval variable ranging from 0 to 23 years. 22% of the sample is foreign born.

Frequency of Marijuana use: Respondents were asked how often they had used marijuana in the past year. Frequency of Marijuana use was coded; 0=Never; 1=Once or Twice; 2=Less than once per month; 3=About once per month; 4 =A few times per month; 5=About once per week; 6=More than once per week; 7=Every Day or Almost Every Day. One-quarter of the sample (26.6%) reported no marijuana use in the past year. Approximately one-third (35.5%) of the sample had used marijuana every day or almost every day.

Self-identified former or current gang member: Respondents were whether they were a former or current gang member. Self-identified former or current gang member was dummy coded 1=self identified gang member; 0=not a self identified gang member. Slightly more than half of the respondents (54.3%) self identified as a former or current gang member.

Family Crime Score (B2E_FAMILY_CRIME_SCORE): Family crime score is a XXXX variable ranging from 0 to 8 (mean 4.60, std. Dev 2.535. 61% have a family member involved in crime

Positive Attitudes to school and work: The Positive attitudes to school and work Scale (alpha=.90) was created by combining the 34 items on attitudes towards education and employment. For full list B26 on education C17 and C18 on employment in Appendix C.

Crime Victim: Respondents were asked whether they had been the victim of various types of crime in the past six months (see question G1 on victimization in appendix C). The Victimization Index (alpha=.87) was created by adding the fifteen items on victimization. If respondents indicated that they had 'never' experienced a certain type of victimization they were given a score of 0; if they reported that they had been the victim of this type of crime 'once' they were given a score of 1; if they reported that they had victim of this type of crime 'twice' they were given a score of 2; if they reported '3-5 times' they were given a score of 3; if they reported '6-9 times' they were given a score of 4; and if respondents indicated that they had been the victim of this type of crime '10 or more times' they were given a score of five. Scores on the Victimization Index range from 0 to 59 (mean=10.29).

Self-reported Crime and Delinquency: Respondents were asked if they had engaged in various types of property and violent crime in the past six months. The Crime Index (alpha=.96) was created by adding the 31 items on self-reported crime and delinquency found in questions H1 on property crime and H2 on violent crime (see appendix C) together. If respondents indicated that they had 'never' engaged in a particular type of crime they were given a score of 0; if they reported that they had engaged in the crime 'once' they were given a score of 1; if they reported that they had engaged in the crime 'twice' they were given a score of 2; if they reported '3-5 times' they were given a score of 3; if they reported '6-9 times' they were given a score of 4; and if respondents indicated that they had engaged in the crime '10 or more times' they were given a score of five. Scores on the Crime Index range from 0 to 149 (mean=28.47).

Stopped/Searched/Detained: Respondents were asked whether they had ever had a negative experience with the police in their lifetime. Almost one-third (29.9%) of the sample reported that their most negative experience with the police involved being stopped, searched or detained. Stopped/Searched/Detained is dummy coded 1=yes; 0=no.

Verbal abuse/Disrespect/Harassment: Respondents were asked whether they had ever had a negative experience with the police in their lifetime. Approximately one-fifth (18.6%) of the sample reported that their most negative experience with the police involved verbal abuse, disrespect or harassment. Verbal abuse/Disrespect/Harassment is dummy coded 1=yes; 0=no.

Brutality/Excessive force: Respondents were asked whether they had ever had a negative experience with the police in their lifetime. Over one-third (36%) of the sample reported that their most negative experience with the police involved police brutality or the excessive use of force. Brutality/Excessive force is dummy coded 1=yes; 0=no.

False arrest/False evidence
Respondents were asked whether they had ever had a negative experience with the police in their lifetime. Almost one-third (7.9%) of the sample reported that their most negative experience with the police involved being falsely arrested or having evidence planted on them. False arrest/False evidence is dummy coded 1=yes; 0=no.

Positive Police Experience: Respondents were asked whether they had ever had a positive experience with the police in their lifetime. Positive police experience is a dummy variable coded 1=yes; 0=no. Approximately one-third (31.1%) of the study population reported a positive experience with the police.

Spent Time in Custody: Respondents were asked whether they two questions related to time spent in custody: (1) Have you ever served time in a youth detention facility or a youth correctional facility? (2) Have you ever served time in an adult detention facility or an adult correctional facility? Responses to this question were added together into a single measure which was dummy coded 1=yes; 0=no. In total 40.9% of the respondents had spent time in either youth or adult custody.

APPENDIX E: The Perceptions and Experiences of Black Police Officers

PART A: Demographic Information

In this first section of this interview I want to ask you a few questions about yourself and your personal background. These questions will help me determine whether different types of people have different types of attitudes or experiences.

A 1) What is your age?

1. Under 25
2. 25-35
3. 36-44
4. 45 or above

A2) Were you born in Canada?

1. Yes [Go to A4]
2. No [Go to A3]

A3) How long have you lived in Canada?

1. Less than 5 years
2. 5-10 years
3. 11-15 years
4. 16 – 20 years
5. More than 20 years

A4) Black people often describe themselves in terms of their skin colour. Would you describe yourself as having a:

1. Dark complexion
2. Medium complexion
3. Light complexion

A5) How long have you been a sworn police officer?

1. Less than 5 years
2. 5-10 years
3. 11-15 years
4. 15 or more

A6) How would you identify your current rank. Would you say you are a:

1. Constable
2. Sergeant/Staff Sergeant
3. Inspector/or above

A7) Did you Grow up in the GTA? Do you currently live in an urban or rural area?

A8) Why do you police where you do?

A8) Can you describe your encounters with the police before you became an officer yourself?

PART C: Perceptions of Racial Bias by the Police

In this section of the interview you will be asked several questions about your views of the police treatment of black males in the Greater Toronto Area (GTA). You will also be asked to comment on research findings about black males' perceptions of the police.

C1) In general, do you think the police treat Black people the same as White people?

1. Yes (treat the same) [go to C4]
2. No (treat differently) [go to C2]
3. Sometimes treated same/sometimes treated differently [go to C2]
4. Don't know [go to C4]
5. Refused [go to C4]

C2) Do you think they treat Black people MUCH better, BETTER, WORSE, or MUCH worse, than they treat White people?

1. Much better
2. Better
3. Worse
4. Much worse
5. The same [go to C4]
8. Don't know/depends [go to C4]
9. Refused [go to C4]

C3) How often do you think they treat Black people __X__ than White people? Would you say often, about half the time, once in a while, or almost never?)

1. Often
2. About half the time
3. Once in a while
4. Almost never
8. Don't know/depends
9. Refused

Sometimes the police use PHYSICAL FORCE to protect themselves or others from harm. At other times, the police may use physical force when they are arresting a person or to keep a crime suspect from escaping.

C4) In general, do you think the police are more likely to use physical force on Black people, on White people, or do you think there is no difference?

1. More likely with black people
2. More likely with white people
3. No difference
8. Don't know
9. Refused

C5) In your opinion, are black people more likely to be unfairly or wrongly shot by the police than white people?

1. Yes
2. No
8. Don't know
9. Refused

C6) Research from Canada and other Western nations has consistently shown that black people are more likely to believe the police are racially biased or discriminatory than members of other racial groups. In your professional opinion, are these views at all justified? Please explain.

C7) Research from Canada and other Western nations has consistently shown that black people and black males in particular, are also more likely to report having negative experiences with the police than are members of other racial groups. In your professional opinion, are these views true? Please explain.

C8) Some people, the police in particular, complain that some black people will complain about racism or being treated unfairly by the police even when they have been treated in a fair and just manner. Do you think there is any truth to this argument?

C9. In general, do you think black people treat the police differently than white people? For example, in your opinion, do black people respect police authority to the same extent as white people?

C10) How would you describe your relationship with the black community?

C11) How do you personally feel about blacks perceptions of the police?

C12) Do you think your own perceptions of the police and of police bias changed after you became a police officer? If so how did they change?

PART E: Police Treatment of the Black Community

The fourth section of this paper will focus on how the police treat black citizens across the GTA.

E1) In your professional opinion, have you witnessed racial profiling activities by other officers in your police service? Did you ever say anything about it? Why or why not?

E2) Have you witnessed racist language being used by officers from your police service when they are dealing with or talking about black people?

E3) Have you witnessed police officers being rude or disrespectful towards black citizens? In your opinion do you think the police are less respectful with black citizens compared to members of other racial groups?

E4) In your professional opinion, have you witnessed police brutality [excessive force] against black citizens by members of your police service? Did you ever say anything to the officers about it? Why or why not?

E5) In your professional opinion, have you witnessed police corruption (shakedowns/extortion etc.) by members of your police service? Do you think members of your service are more likely to engage in these types of activities against black citizens than they are members of other racial groups?

E6) In your professional opinion, do black citizens or predominantly black neighbourhoods receive the same level of service by your police service than other citizens/neighbourhoods?

E8) If you witnessed police mistreatment or violence directed towards black citizens would you report it to the appropriate person? If not, please explain why.

E9) In your opinion, if one of your fellow officers witnessed racial profiling or police brutality against a minority citizen – do you think that they would report it to their superior officers or stay quiet about it? Why or why not?

PART G: Policy Solutions

Finally, I would like to ask you how we might improve the situation or circumstances of black males in relation to policing and criminal justice within the GTA.

G1) Police services in the GTA and other urban centres are actively recruiting members of racial minority groups into their ranks. In your opinion, why might some black Canadians not want to join the police?

G2) What can we do to increase the numbers of black Canadians entering into a career in policing? What are the potential barriers or obstacles to recruiting black people into policing?

G3) What can we do to improve black male experiences with the police? For example, what can be done to improve their interactions with police officers? What can be done to reduce or eliminate the verbal and physical abuse they receive at the hands of the police?

G4) How can we improve black males' perceptions of the police?

G5) How can we improve the professional experience of black male police officers?

PART H: Further Questions

H1) We have now come to the end of the interview. I want to thank you again for your participation in this study. Are there any other topics or issues that you would like to discuss at this time?

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Indigenous girls and the violence of settler colonial policing

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Abstract
In cities and towns across Canada, Indigenous girls are being hunted, harassed, and criminalized by local law enforcement agents and the Royal Canadian Mounted Police. These normalized outbreaks of state control, often punctuated by the use of deadly force, are not isolated incidents in an otherwise just and fair social order. Rather, they are reflective of Indigenous girls' daily realities embedded within the structure of an *ongoing* settler colonial social context that has strategically invented the criminal justice system to secure and maintain settler sovereignty. As such, this paper aims to redirect our critical analysis of the policing and caging of Indigenous girls through the geopolitics of settler colonialism. In the wake of mass protests against colonial state violence throughout 2014, resistance decrying the justice system and insisting that #BlackLivesMatters and that Indigenous lives matter, I argue that we have an urgent need to listen to the stories that Indigenous girls have to tell. These are not just any stories, but narratives that profoundly destabilize the hubristic portrayal of Canada as a humanitarian nation cleansed of settler colonial rule.

Keywords: *Indigenous girls; settler colonialism; policing; colonial state violence; gender; criminality*

Introduction

> "Look with your wire / cutters, she / says. Look what the world has done to you."
> No'ukahau'oli Revilla, *Say Throne*

The rain was torrential. Hopscotching across puddles, we dashed through the umbrella-laden street until reaching the weighty doors of the Empire State Building. Iconic in its grandeur and notable for its ability to grant a striking aerial view of New York City, this structure houses the headquarters of Human Rights Watch (HRW), a prominent global organization documenting human rights violations worldwide.

I was accompanying Annabel Webb, co-founder of the Vancouver based NGO Justice for Girls, to a meeting with the Women's Rights Division of HRW. We were there to discuss the possibility of HRW conducting an investigation in Canada, specifically an inquiry into police violence in the lives of Indigenous girls. HRW had never before launched an examination of human rights abuses in Canada—the deceptive and widely circulating narrative equating this settler colony with a humanitarian nation imbued with justice and equality, ever present—and we were there to persuade them that this was both necessary and urgent.

The team at Justice for Girls, and a number of their allies, including scholars like myself as well as organizations such as the Native Women's Association of Canada, had been working diligently over many years to document instances of police brutality and failures in the protection of Indigenous girls by the Canadian state. However, despite all of the fierce advocacy and careful, meticulous research, including petitions to the international community, the staff at JFG felt as though they hit intractable institutional blockage whenever they attempted to draw attention to these issues in Canada, colonial walls that would simply not move. In the face of such barricades, they appealed to HRW to lend the organization's influential credibility and resources to reveal how Indigenous girls were under siege by police and other law enforcement agents—to offer a crucial corrective to the optics of erasure and make legible how police (state) violence has reached terrifying velocity under settler colonialism. Indigenous girls, we argued at that meeting, were living with incomprehensible colonial gender violence in their day-to-day existence, in the viciousness of everyday life taking place in the back alleys, shadowed corridors, *and* open streets of white settler society.

At one point during the meeting, when the Director of the Women's Division asked whether British Columbia, where the investigation would be carried out, was unique in its treatment of Indigenous girls, I spoke directly to instances of police violence that I have witnessed through my longstanding work in Saskatoon. "This is not just happening in BC," I told her, "this is an entire circulation of networked settler state power that targets Indigenous girls in egregious and insidious ways, wherever they are. Sometimes this is dressed up as "crime prevention"[1] and sometimes it is camouflaged under the guise of "community policing." Regardless of the way it is classified by the state, or the province in which it takes place, it is still

[1] See Dean (2005) for an analysis of "state protection."

abhorrent colonial gender violence." Eventually HRW agreed to carry out the investigation, resulting in the 2013 report *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada.*

Building on the foundation of this collective work and pushing its critique several steps further into the realm of critical praxis and decolonization, this article begins from the premise that in cities and towns across Canada, Indigenous girls are being hunted, harassed, and criminalized by local law enforcement agents and the Royal Canadian Mounted Police. These normalized outbreaks of state control, often punctuated by the use of deadly force, are not isolated incidents in an otherwise just and fair social order. Rather, I contend that they are reflective of Indigenous girls' daily realities embedded within an *ongoing* settler colonial social context that includes the strategic (historic) invention of the criminal justice system to police (quite literally) the borderlands of possession and dispossession. As such, this article aims to redirect our critical analysis of the policing and subsequent caging of Indigenous girls through the geopolitics and broader horizon of settler colonialism. In doing so, it offer alternative frames for interrogating this violence with the aim of dismantling it. In the wake of mass protests against colonial state violence throughout 2014, resistance decrying the justice system and insisting that #BlackLivesMatters and Indigenous lives matter, I argue that it is crucial for us to learn how to listen to the stories that Indigenous girls have to tell. These are not just any stories, but narratives that profoundly destabilize the hubristic portrayal of Canada as a humanitarian nation cleansed of settler colonial rule.

Before proceeding, I wish to clarify the social and political location from which I author this piece. I write this from the complicated position of a woman of colour born and raised on Cree territory in Saskatchewan, the daughter of immigrant parents fleeing from their own colonial inheritance in Northern India. Growing up on this land and being educated by its people has undoubtedly shaped the way I see and understand the world. I have learned a great deal over the years about the ways in which Indigenous histories and struggles have been elided within dominant anti-racism discourses of social change. People of colour are situated in and through incongruous terrain in Canada as collectives, marginalized by a white settler nationalist project while at the same time being invited to take part in the pervasiveness and harm of ongoing settler colonialism (Lawrence and Dua, 2005). Following Razack (2015), I contend that, "rather than focus on our individual histories of dispossession and migration, and thus handily avoid the question of what it means to live in a settler colonial state, people of colour and white settlers alike must confront our collective illegitimacy and determine how to live without participating in and sustaining the disappearance of Indigenous peoples" (p. 27). This is not simply a matter of "giving back" or offering patronizing charity in the face of grossly unjust social, political, and economic realities or a facile acknowledgment of the stolen land upon which settlers reside. Rather, it requires that we attempt to think through what it means to embody the practice of "standing with" Indigenous peoples, finding common ground with Kim TallBear's call for conceiving and enacting scholarship and advocacy that seeks a shared conceptual ground amongst a community of people working towards similar political ends (TallBear, 2014).

Decolonization can only happen in concert with Indigenous peoples, and this requires all of us to think long and hard about the relationships we have to these struggles. Perhaps more importantly, it requires that we be honest about them.

Working as an advocate for youth in both British Columbia and Saskatchewan for over a decade also created a host of moments through which I was able to bear witness[2] to colonial state violence enacted against Indigenous girls. In turn, I have been confronted with the question of what to do with this knowledge, knowing full well that inaction is complicity within the context of unequal power relations, regardless of how much you try to convince yourself otherwise. Brutal assaults on the lives of Indigenous girls continue while many of us willfully ignore what is happening. The isolation persists. The exploitation and violence continues to be positioned, strategically, as a problem of their own making. Thus, while the accounting I offer in the following pages is a partial and preliminary one, it is a first step towards a larger community-based research and advocacy project under development in Saskatoon (happening in the wake of a $4.3 million dollar increase in the police budget for the hiring of additional officers, I might add). I envision it as a provocation to expand and deepen how we think about the violence of settler colonial policing in the everyday lives of Indigenous girls and to inform future decolonial advocacy that centres their leadership, lived realities, and stories more robustly.[3] In doing so, I hope to contribute to, and augment, all of the important work that is already being undertaken by Indigenous women and youth in this area (see, for example, Clark, 2012; Hunt, 2015; Allooloo, 2014; L. Simpson, 2014; Wilson, 2013; Laboucan-Massimo, 2015; Smiley, 2012; Kingsley and Mark, 2001; and various initiatives through the Native Youth Sexual Health Network and the Indigenous Young Women's National Council) and to act in solidarity with Indigenous peoples resisting colonial state violence in its multiple forms.

The remainder of the article unfolds as follows. I begin by theoretically situating this critique within the frameworks of settler colonialism and critical anti-racist and Indigenous feminism, making clear how Indigenous girls' violent encounters with the police are intertwined with the politics of territorial seizure characteristic of settler colonies, as well as the maintenance of settler sovereignty. Next, I sketch a number of lived realities on the ground that demonstrate the gravity of settler colonial violence enacted against Indigenous girls through the institution of policing. This section draws on findings from the HRW report, my cumulative work as an advocate for Indigenous youth, as well as ethnographic research carried out on the prairies between 2006 and 2013. In the next section, I trace the linkages between settler colonial policing and the horrific reality of murdered and missing Indigenous women and girls in Canada; I push against portrayals of these material and political manifestations of colonial gender violence as separate issues. Finally, I conclude with a call to action that strategically positions the eradication of colonial gender violence at the epicenter of Indigenous critical praxis and decolonization.

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[2] See Farmer (2005) for a more in-depth discussion of the politics of bearing witness (p. 25).

[3] For further information regarding this increase in the budget of Saskatoon City Police, see Waldner (2015).

Policing Indigenous bodies on stolen land

Building a deeper, anti-colonial critique of the violent policing of Indigenous girls requires being vigilant about the way we unravel the normative frameworks that structure the everyday in a settler colonial reality intent on mutilating Indigenous bodies, dislocating them, holding them in captivity, and ultimately, making them disappear.[4] It requires, in other words, adjusting the critical aperture through which we render competing truth claims about Canada and the stolen land where its contested sovereignty rests. "We know the happy stories that the settler state tells about itself," writes Billy-Ray Belcourt (2015), "stories about multiculturalism, about reconciliation, about nationalism, about gay-friendliness" (p. 9). In line with these "happy stories," the settler state of Canada also fashions tales about the safety, protection, and purported care for all of its citizens. Resurrecting social and political histories of conquest, territorial seizure, and dispossession, however, brings an alternative image into view—it forces us to think differently about what is really going on.

The (ongoing) need for positioning encounters between Indigenous peoples and the criminal justice system, including the police, within the larger context of settler colonialism is as urgent as it ever was. As a nation, we are masters of historical erasure, experts of institutional cover up. This crystalized for me, once again, at a conference about the criminalization and incarceration of Indigenous women and girls where I presented a talk on the violence of settler colonial policing in Saskatoon in May of 2015—the talk that became the foundation for this article.[5] Hosted by the College of Law at the University of Saskatchewan, the two-day event was designed to bring together scholars, activists, policy makers, government agents, and those with lived experiences to collectively consider the issues of racism within the justice system and the disproportionate representation of Indigenous women and girls in Canadian prisons. I listened to numerous presentations and, apart from a couple of exceptions, there was a surprising and notable absence of discussion about colonial state violence within the context of settler states. The majority of conversations focused on issues of over-representation (which while certainly important, misses the point about the historic role played by criminal justice system with respect to Indigenous peoples), how prison personnel needed to do a better job of treating "prisoners"

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[4] Sherene Razack's (2015) *Dying from Improvement: Inquest and Inquires into Indigenous Deaths in Custody* deftly takes up the notion of the "disappearance" of Indigenous peoples in Canada. In her chilling words, "The idea of a disappearing race is also productive for settler subjectivities. Through it, settlers are able to feel Indigenous disappearance and to imagine their own superiority" (p. 5).

[5] The day following my talk, I was approached by a young white woman (she self-disclosed as an emergency room nurse at one of the local hospitals) who told me she found my critique of state violence and policing in the lives of Indigenous girls too "aggressive." She explained that she worked closely with many police officers, some of them were her friends, and that "they are trying their best to work with a community that has a lot of problems." I responded by arguing that my "aggressiveness" and anger was derived from years of bearing witness to the atrocities enacted against Indigenous girls by police and other state actors. From where I was standing, unapologetic, affective outrage to this ongoing colonial injury was the only response that reflected any kind of humanity. Her hostility towards me for bringing forth this critique, however, clearly indexed the power of settler colonial machinery to (re)instate notions of white settler benevolence, even in the face of mounting empirical evidence that clearly indicates otherwise.

with care, and strategies for making the criminal justice system more responsive to Indigenous communities. Even the conversations about the criminalization of Indigenous women and girls were noticeably truncated.

My aim here is not to unproductively criticize the organizational efforts aligned with this conference. Indeed, we need venues where we can think through the intellectual, political, and material problems of Indigenous peoples' encounters with the criminal justice system in rigorous ways. What I am concerned about, though, is that without an *explicit and deep* anti-colonial analysis we run the risk of reinscribing the narrative of white settler benevolence (the state is trying hard to improve the situation for Indigenous peoples) *and* a colonial subjectivity that keeps white settler power in tact. The dispersal and dissemination of ideas, theories, and notions of cause and effect about Indigenous women and girls' over-representation in prison generated in these spaces of authoritative knowledge production, then, serves a pedagogic function for both those in attendance and a wider public. It helps to determine what comes into view and what recedes or vanishes altogether, a decidedly vital camouflaging technique when a state has been built through occupation. Robert Nichols (2014) captures this succinctly when he says, "When the critique of incarceration rests upon the over-representation of racialized bodies within penal institutions, this tactically renders carcerality as a dehistoricized tool of state power—even if distorted by the pathological effects of a racist society—displacing an account of the continuity and linkages between carcerality, state formation, and territorialized sovereignty" (p. 444).

In step with these concerns, I contend that it is crucial to locate Indigenous girls' experiences with policing within the distinct political, ideological, and material formation of settler colonialism and to vociferously interrogate the colonial violence enacted against Indigenous peoples by state institutions—an anti-colonial spin on Weber's insight into state monopoloy over legitimate violence (Weber, 1994). Drawing on the work of scholars who have traced the itineraries of "the colonial present" (Gregory 2004) in settler nation states (Alfred, 2009; Coulthard, 2014; A. Simpson, 2014; Turner, 2006), then, I regard Canada first and foremost as a settler colony marked by the on-going dynamics of colonialism. In the tradition of this scholarship that ruptures the myth of the two founding fathers, the emergence of Canada is configured as a narrative of conquest based on the doctrine of *terra nullius,* the principle of "empty lands," and no longer as a mystical migration story. The principle of "empty" lands served, historically, to unlock the ideological gates and secure the secular and religious rationalizations leading to the "legal" dispossession of Indigenous peoples from their original territories and the subsequent implementation of laws and social policies that institutionalized the forced assimilation of Indigenous peoples and elevated the cultural and social status of white settlers.

The goal of settler colonizers is to create a new social and political order with the ultimate aim of securing a permanent hold on specific, conquered locales. Ongoing dispossession is also indexed by the persistent seizure of Indigenous land and displacement of peoples for the purposes of capital development and natural resource extraction which is carried out through, as Glen Coulthard (2014) in *Red Skin White Masks* indicates, "settler state policies aimed at

explicitly undercutting Indigenous political economies and relations to and with land" (p. 4). Structural decolonization, as both a political and practical undertaking, exists *entirely* outside the purview of a colonial social order—there is *no* intention to return stolen territory. Settlers come to stay.

To successfully build a settler colony, however, there is a surreptitious, recurring need to disavow the presence of the Indigenous "other" and effectively repress, co-opt, and extinguish Indigenous alterities (Povinelli, 2002). As Tuck and Yang (2012) remark, "the settler positions himself as both superior and normal; the settler is natural whereas the Indigenous inhabitant and the chattel slave are unnatural, even supranatural" (p. 6). The emergence of settler nation-states, in this sense, embodies a distinctly sovereign charge and claims a "regenerative capacity" to conquered territory (Veracini, 2010, p. 3) that aims to destroy, replace, rename, classify—to assimilate in all of the ways that mitigate threats or resistance to the process of growing settler dominance. Through this process, power is consolidated across social institutions and legal mechanisms that reorganize geography, access to land, cultural practices, family and kinship networks, spirituality, identity, and ultimately political subjectivity (Cannon & Sunseri, 2011).

Patrick Wolfe's (2006) work is especially instructive in illuminating the staying power of the settler colonial present. Tracing the footsteps of colonial settlement through what he calls the "logic of elimination," Wolfe argues that this logic, which seeks to contain and regulate all things Indigenous, may change in form, but ultimately remains continuous through time (p. 387). When explaining the variance in elimination strategies, he writes, "the positive outcome of the logic of elimination can include officially encouraged miscegenation, the breaking down of native title into inalienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations. All of these strategies, including frontier homicide, are characteristic of settler colonialism" (p. 388). Accordingly, "invasion is a structure rather than an isolated event" and the particular manner in which elimination takes place, both in terms of target and methods, changes with the specificity of the historical moment in which we find ourselves. At the heart of the matter, though, lies this reality: the continual existence of Indigenous peoples in Canada constitutes a direct conflict with settler control and the related political entitlements ensconced in settler governance. They have not been eliminated, nor wholly assimilated. They continue to fight for what is theirs.

With respect to undertaking a critical appraisal of violent policing in the lives of Indigenous girls, the lens of settler colonialism importantly serves to re-establish essential linkages between the everyday lives of these young women and the dynamics of colonial power in which they are entangled. In other words, while the lived realities of Indigenous girls may be positioned by state agents, youth workers, and law enforcement officers to be outside the scope of the larger political questions of Indigenous sovereignty and self-determination (characterized instead as a matter of immediate crisis response, individual failure, and fragility),[6] scholars of settler colonialism enable us to collapse the distance between these seemingly disparate sets of

[6] See, for example, Parliament of Canada's report from October 2003 called "Urban Aboriginal Youth Strategy."

issues and place them in direct conversation with one another. Indigenous girls, then, operate as young Indigenous people in a *distinctly* settler colonial space where their very resistance and survival stands in opposition to fully consummating settler ownership and legitimacy—they stand in the way of settler colonialism and question the existence of the settler state as *a fait accompli*.[7] Part of my preoccupation in this article, then, is with uncovering how forms of colonial state violence, including policing targeted at Indigenous girls, intertwine with the historiography of a Canadian settler state whose nationalist project continues to rest on stolen land.

It is also important to flag that when critiques of policing are absent of a settler colonial framing, it is much easier to position the actions of a few police officers as a case of "a few bad apples." Critique rooted in the social and political histories of Indigenous peoples places front and center the *fundamental* role the institution of policing has played in colonial state formation. Moreover, set against the broader reality of persistent occupation, displacement, dispossession and environmental wreckage, it follows colonial logic that the criminal justice system would only be extended, enhanced, and strengthened to further control, undermine, and terrorize Indigenous polities (Government of Saskatchewan, 2011). Policing is an essential state vehicle through which conquest becomes inscribed on the ground. Indigenous peoples, thus, experience policing itself as a colonial force, an apparatus of capture *imposed externally* by a government they have not authorized and do not have effective participation within—one of the indicators of militarized surveillance and discipline (Nichols, 2014, p. 446).

Repositioned through the channels of settler colonial social and political histories, the Royal Canadian Mounted Police (previously the North-West Mounted Police) can be viewed as a constitutive entity designed to carry out genocidal extermination, subjugation, and physical containment of Indigenous communities.[8] The actions of this police force were directed by Ottawa's policy of coerced assimilation (Jacobs, 2012; Dickason & McNab 2002). Mounties, as they are popularly known in Canada, were deployed on the Canadian frontier to facilitate Indigenous peoples subjection to colonial law and to "ensure the negation of Indigenous sovereignty and to implement effective policies of containment and surveillance" (Nettelbeck and Smandych, 2015, para. 3). The RCMP were well positioned for this task; Ottawa had invested in them the power to arrest, prosecute, judge, and sentence offenders, making any notion of the legal protection of Indigenous people under the British Crown a complete illusion (Graybill, 2007). In 1920 when residential school became compulsory, the RCMP was part of the settler state's front-line foot soldiers that guaranteed the attendance of Indigenous children. Gendered racism and the underlying colonial ideologies of white superiority and "Indigenous

[7] See A. Simpson (2014) for an excellent analysis of the politics of refusal and nested sovereignty.

[8] On this point, Razack (2015) explains, "from its inception as a colonial police force, the Northwest Mounted Police, which would become the Royal Canadian Mounted Police (RCMP), assisted in the securing the territory, ultimately transforming its largely military function into a domestic policing of the settler's town, a town surrounded by reserves (p. 14).

savagery," as fabricated by a newly emerging Kanata to legitimate the theft of land and natural resources,[9] are therefore encoded in the operation of the Canadian criminal justice system; they *are* the cruel, unjust, and bloody historical roots of its inception as a social institution *and* they are the roots that make possible the contemporary, ongoing reproduction of the desecration of humanity in the lives of Indigenous girls.

Bleeding out: Colonialism, gender and violence in the everyday

A critical analysis of settler colonial policing in the lives of Indigenous girls would be both harmful and limiting without emphasizing how colonial relationships are highly gendered and sexualized. And once we have established this understanding, it follows that contemporary police interactions with Indigenous girls are building on a historical pattern of gender violence. "The roots of sexual violence in Canada are as deep as colonialism itself," argues Sarah Hunt (2010, p. 27). Elsewhere, I have written that, if you are an Indigenous girl, these mephitic roots strangle life and sanction the invisibility of violence against you.[10] It is structural exploitation offered up in plain sight yet systematically denied, a deliberate bleeding out of decolonial futurity in both past and present.

Tracing the linkages between then and now brings to the surface how sexual violence, and the concomitant disempowerment of Indigenous women and girls, was an integral part of nineteenth-century strategies of domination and *carries forward* to the present day through the foundational violence of the state and state's complicity in sanctioning the invisibility of gender violence against Indigenous women and girls. The condoned invisibility works in concert with individual acts of male violence (Razack, 2002) and reinscribes a dehumanized and racialized Other (the Indigenous woman or girl) that can be violated at will with minimal or no consequences. Further, the Canadian regulation of Indigenous identity through the gendered notions of "Indianness" produced through the Indian Act has generated, as Bonita Lawrence (2003) writes, "unimaginable levels of violence, which includes, but is not restricted to, sexist oppression" (p. 5). This legislation also eradicated traditional leadership in Indigenous communities through the creation of band governments, which in turn systematically restricted Indigenous women's role in politics and reinforced politics as a strictly male domain.[11] In stark contrast to the highly patriarchal character of European society prior to colonization, Indigenous

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[9] The *Report of the Aboriginal Justice Inquiry of Manitoba* speaks to the long history of punitive measures carried out by police and state agents against Indigenous populations in Manitoba and Saskatchewan, including the capturing and executing of "rebels" associated with the North-West Rebellion of 1885 (Aboriginal Justice Implementation Commission, 1991, p. 593).

[10] See Dhillon's (2014) "Eyes Wide Open" as part of the online compilation series *#ItEndsHere* created by Indigenous Nationhood Movement in response to the disappearance and murder of Loretta Saunders in New Brunswick, Canada.

[11] Sangster (2002) offers compelling insight into the preoccupation of the Canadian state with Indigenous girls' sexuality as well as the state's desire to limit Indigenous girls' exposure to cities.

societies for the most part were not male dominated. Women served as leaders across the domains of the political, spiritual, and military; many societies were matrilineal. In her book *Conquest: Sexual Violence and the American Indian Genocide*, Andrea Smith (2014) skillfully advances this argument when she says, "putting native women at the center of analysis compels us to look at the role of the state in perpetrating both race-based and gender-based violence. We cannot limit our conception of sexual violence to individual acts of rape—rather it encompasses a wide range of strategies designed not only to destroy peoples, but to destroy their sense of being a people" (p. 3). The project of colonial sexual violence, then, establishes the ideology that Indigenous women and girls' bodies are inherently violable and by extension, that Indigenous lands are available for the taking.

In *Mohawk Interruptus: Political Life Across the Borders of Settler States,* Audra Simpson (2014) explains how Indigenous girls' bodies have historically been rendered less valuable because of what they are taken to represent: land, reproduction, kinship and governance, an alternative to heteronormative and Victorian rules of descent. "Their bodies carry a symbolic load," she argues, "because they have been conflated with the land and are thus contaminating to a white, settler social order" (p. 156). State failures to respond to instances of abuse, and the implementation of social policies that eclipse the layered realities of Indigenous women and girls, brings into relief how the state itself is the driving force behind violence enacted upon Indigenous peoples historically and in the present, the primary perpetrator in fact (Clark, 2012). In a similar vein, Downe (2006) declares, "the abuses experienced by Aboriginal girls over the past 130 years are not isolated occurrences; they are connected through a pervasive colonial ideology that sees these young women as exploitable and often dispensable" (p. 3).

Augmenting this critique, scholars working in the field of girlhood studies are calling for the need to reconceptualize Indigenous girlhood in light of the way it is shaped under a western neocolonial state and in the midst of overlapping forms of colonial violence targeting Indigenous girls (de Finney, 2014, p. 8). This means exploring the ways that Indigenous girls themselves unpack persistent stereotypes of what it means to be an Indigenous young woman growing up in a settler state—and the paradox of invisiblity/hypervisibility that accompanies this existence—and situating their everyday processes of resurgence within and against this colonial matrix. In a critical webinar entitled "Self Governance for Our Bodies and Communities: Responding to Colonial Based Gender Violence," (part of the Idle No More series) representatives from the Native Youth Sexual Health Network and the Indigenous Young Women's National Council exemplify de Finney's (2014) emphasis on Indigenous girlhood. The young women in this webinar speak courageously and insightfully about Indigenous girls' experiences with colonial gender violence and the various forms of "unconventional leadership" that Indigenous girls are demonstrating in their communities to actively resist and respond to structural violence. They also outline the variance in colonial gender violence faced by Indigenous girls, both historically and in the present. Alexa, for instance, clarifies: "colonial gender based violence has many, many forms. Sometimes it's easier for me to try to think about it as a trickster and all of the many ways that a trickster appears. Colonial gender based violence is the state taking children away from

their homes, whether that was the child welfare system, the 60s scoop, residential schools, or even just when young Indigenous people have to move away from their homes to get access to supplies and education or resources. It's that deliberate removal of children and breaking down of family and rooting into our communities more hate and violence than love."

In concert with the voices of the Indigenous young women speaking out in the webinar, I contend that state violence directed at Indigenous girls is a mirroring back of the white settler society of Canada—a mediation between past and present, a jump between historical and lived. It is the material manifestation of the difference between "the truth that is told and the truth that is sold" (Marker, 2003, p. 362). I purposefully write in opposition, then, to those who would de-race and de-gender the experience of what it means to be an Indigenous young woman living in Canada.[12] Settler colonizers have inscribed hierarchy and domination on the bodies of Indigenous peoples through patriarchal gender violence and the day-to-day experiences of Indigenous girls are not exempt from this practice. Rather, as Leanne Simpson (2014) reminds us, "white supremacy, rape culture, and the real and symbolic attack on gender and sexual identity and agency are very powerful tools of colonialism, settler colonialism, and capitalism, primarily because they work very efficiently to remove Indigenous peoples from our territories and to prevent reclamation of those territories through mobilization" (para. 9). As such, Indigenous girls' experiences speak volumes to the power of colonial gender violence that has, from the point of first contact, systematically subjugated Indigenous women and girls and symbolically positioned them as bearers of a counter-imperial order and consequently, a direct threat to colonial rule (Smith, 2005). Their contemporary encounters with settler colonial policing only shatter the ostensible temporality of this violence.

Dispatching colonial power: Badges, guns, and flashing red and blue lights

As previously mentioned, this article builds on the collective work undertaken by Justice for Girls and Human Rights Watch. *Those Who Take Us Away* (Human Rights Watch, 2013) is a chilling testimony to the persistent usage of violence by law enforcement agents to capture and injure the bodies of Indigenous girls, to even take their breath away. Dissecting the relationship between the RCMP and Indigenous women and girls in ten towns across Northern British Columbia, it documents not only how Indigenous women and girls are *under-protected* by the police but also how they have been *subjected to* gross levels of state violence through the dispatching of colonial power vis-à-vis the institutional of policing—reports of physical abuse by both police and judges, sexual assault, the terrorizing of Indigenous communities through hyper surveillance, unjust detainment for intoxication, racist threats, and zero accountability for police misconduct litter the pages. As a case in point, a young Indigenous woman, Sophie, explains her

[12] These points are underscored by my previous research highlighting the problematics associated with the homogenization of the urban youth experience in general (Dhillon, 2011).

run-in with police after they showed up in a field where gang members were chasing her. The RCMP picked her up and dragged her to the back of a police car and the following unfolded:

> "I was yelling at them saying: "I was the one who called for help. Why are you guys chasing me?" And they didn't say anything else… They roughed me up. They handcuffed me and put me in the back of the police car and would not allow my mother to come and see me… One of them came and said [through the police car window], "keep kicking and see what happens"… He punched me in the face more than six times. Half of his body was in the police car. Both my mom and sister saw him punch me. Then they came over and saw my face swollen up. I said, "Look what they did to me!" (Human Rights Watch, 2013, p. 50).

What crystalizes into plain sight through this young woman's testimony radically dispels the myth that we live in a post-racial/post-colonial social reality.[13] Her story, and many others throughout the report, paint a clear picture that violent policing practices serve a profoundly regulatory function in settler states like Canada, a way to attach colonial power to the flesh and bones of Indigenous bodies.[14]

While I do not have space to provide an exhaustive overview within the limited scope of this article, there are several key points emerging from the report that merit restatement. I include these points as reminders of the stakes we are up against in thinking through strategies of critical praxis and decolonization. Moreover, as Nichols (2014) reveals, while North American settler colonies may be positioned as colonial spaces that "have moved from openly coercive and violent relations with [I]ndigenous communities towards a more flexible docile politics of recognition and assimilation," this move is "coeval with the growth of a whole shadow system of hard infrastructure that is every bit as material, physical, and coercive as ever" (p. 448). These findings are not just findings. They are grave windows into the capacious power of settler colonial governance and the tremendous harm that is incurred when we disregard the high degree of interaction between the everyday realities of Indigenous girls and the criminal justice system—it remains a primary locus of settler social control.

To briefly summarize the central insights set forth by *Those Who Take Us Away* regarding policing brutality and failures in protection of Indigenous women and girls by Canadian police:

- There is excessive use of force used against Indigenous girls by the police including physical beatings, the breaking of limbs, and attacks by police dogs during arrest and while in custody.

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[13] Wang (2012) speaks to this point of collective delusion with respect to living in a post-racial/post-colonial world.

[14] In the parlance of Razack (2015), "The violence state actors visit on [I]ndigenous bodies imprints colonial power on the skin, as much as the branding of slaves or the whipping and abuse of children in residential schools did. Such a branding declares Indigenous bodies, and crucially their lands, to be settler property, and simultaneously announces that Indigenous people are subhuman, the kind that one can only deal with through force" (p. 6).

- The deployment of tasers—electric shock weapons—has been undertaken in response to threats deemed "low level."
- Inhumane conditions in city cells where Indigenous women and girls are held for public intoxication. They are kept for extended periods without food, in cold temperatures and can be released in the middle of the night inadequately clothed.
- Repeated allegations of rape and sexual assault by police officers, including one case where an Indigenous woman was taken to a remote location outside of town and raped by four police officers.
- Verbal denigration is commonplace, with repeated references to racist and gendered slurs.
- Failure to respond to calls from Indigenous women and girls regarding domestic abuse and shoddy investigative work, if it is carried out at all.
- Displacement of blame onto Indigenous girls by police officers in instances of violence, domestic and otherwise.

HRW, in partnership with Justice for Girls, launched the report in three cities across Canada in early 2013. Ottawa was first with the official press conference on Parliament and meetings at the RCMP headquarters. Prince George, the city in British Columbia's north that served as the geographical center of the study, with the support of the Carrier Sekani Tribal Council, was second. The third was a prairie launch (February 2013) I organized in Saskatoon in collaboration with the Elizabeth Fry Society and local Indigenous activists. Saskatoon was chosen, in part, because of the notorious reputation of the Saskatoon City Police as perpetrators of violence against Indigenous communities, including attacks on Indigenous youth, and the well cited statistics depicting the disproportionate representation of Indigenous peoples—men, women and children—in Saskatchewan jails.[15] It is a setter urban center well versed in the technologies of colonial statecraft where "policing remains devoted to evicting Indigenous bodies from the prairie city, and the imprinting of colonial power on both Indigenous men and women continues apace in gendered ways" (Razack, 2015, p. 22).

The launch took place at the Indian and Metis Friendship Center in Saskatoon's downtown in February of 2013. There were a number of speakers on the panel, including myself, Meghan Roads (the primary researcher from HRW and author of the report), representatives from organizations working on issues of murdered and missing Indigenous women and girls, one of the founders of Idle No More, and the executive director from the Elizabeth Fry Society. After brief opening remarks we opened the floor for a question and answer period. Over a hundred people, including police officers, were in attendance. Various media outlets covered the event ("Women's," 2013; Johnson, 2013; "Landscape," 2013; "Report," 2013).

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[15] The infamous and horrific Starlight Tours are, of course, a central piece of this well-earned reputation. See Wright's (2004) *The Commission of Inquiry into the Matters of the Death of Neil Stonechild* and "Ten Years Later" (2014) for recent discussion of ostensible changes in the Saskatoon City Police as a result. Also see Hubbard's (2004) NFB film "Two Worlds Colliding."

Not surprisingly, after the formal presentation of findings numerous women and girls approached me to ask if HRW would be conducting a similar investigation in Saskatchewan. They also had stories to tell about police brutality and failures in protection that were occurring both in Saskatoon and outside of it, in the transit spaces between reserve and city. One Indigenous girl asked me for my phone number so she could call me to share her experience in private, out of the public exposure of the day's event. She was scared, she said, to say anything when the police were so close by. She called me the next day to explain how she had been severely beaten by a police officer when he came after her in the parking lot of a strip mall in Saskatoon's Westside. "I don't even know why he came after me," she said, "I think he thought I was planning to steal something. He called me a little bitch and threw me onto the ground and kicked me really hard. I was hurting all over." When I asked her if she had told anyone about this experience after it happened, she explained that she felt as though there was no where she could go for help. Apparently, no one was going to believe her anyway.

Prairie policing

The story of police violence recounted by this young Indigenous woman is consistent with my longstanding work as a youth advocate and ethnographer researching state interventions in the lives of urban Indigenous youth in Saskatoon.[16] In the remainder of this section, I share snapshots of my ethnographic fieldwork that reveal the gravity of settler colonial policing in the lives of Indigenous girls in this prairie city. To be clear, my interest here is in prioritizing the state's ongoing and manifold strands of assault on Indigenous girls in order to *make visible* the profound restrictions and harm that comes from everyday, routinized violence inherent in particular social, economic, and political formations, and in this case, specifically settler-colonial ones.[17]

Indigenous girls carry history, memory, and otherwise futures within their bodies, within their varied experiences of colonial occupation and their resistance to it. This came across loud and clear one morning when I entered a community and youth organization in Saskatoon where I was conducting a portion of my fieldwork. I walked into the office space that serves as a sort of headquarters for a program supporting Indigenous youth in custody (both open and secure). Case workers are assigned to each youth file and the case worker is supposed to offer support to the youth as she or he transitions from youth detention out into the "real world." This support can take the shape of assistance in enrolling into community education programs, finding housing, attending probation meetings, and seeking employment. On this particular morning, a young

[16] This ethnographic research has culminated in my first book titled *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention*, forthcoming with University of Toronto Press.

[17] I am being attentive here, to Eve Tuck's (2009) important words about the danger of producing "damage-centered" research (p. 409). My aim in this article is to indict the state – not to create portraits of damage.

Indigenous woman named Sherry[18] was seated next to a desk when I stepped in the room. I had seen Sherry a few times before, but on this day she looked visibly different. There was a large, blackish bruise on her face, although her long brown hair concealed a part of it, and her arm was in a sling. She was dressed in jeans and a simple t-shirt, some kind of mobile device was clutched in her hand. She looked visibly upset, her eyes were narrowed, her mouth in a frown. She wasn't speaking. Sherry's caseworker, Pauline, was sitting behind her desk sipping coffee and typing on her keyboard.

When I saw Sherry, I immediately, of course, asked what happened. Pauline responded in a matter of fact tone, "Oh, it's the cops. They are harassing her again. It happens all the time once you get involved with Corrections and Public Safety." I learned that Sherry had been out walking in the Westside, later in the afternoon the previous day, when she was stopped by two male police officers and accused of breaching her probation orders. According to Pauline, Sherry had tried to explain that she was not in breach of her probation orders but the cops didn't believe her and started accusing her of lying. The situation "escalated," that is how Pauline described it, and Sherry eventually contacted Pauline from St. Paul's Hospital, where she ended up to get her arm and face examined after the altercation with the police. "They let her go, but they roughed her up before they did," Pauline told me. When I asked Pauline what she was going to do to take this matter up, she told me that the only recourse she had was to go to the police station and file a formal complaint. But that, she said, would be very time consuming and often didn't result in anything being done. During this conversation Sherry simply sat still. Dead silent.

What can we make of Sherry's silence? Was her silence imposed from above, from below? What is our role in witnessing these events and making sense of them? All of these questions are fundamental to how we think about what it means to place Indigenous girls' experiences at the centre of critical investigations into settler colonialism. At the moment in which all of this was unfolding, I did not feel like it was my place to ask Sherry to speak or to share her viewpoint on her violent interaction with the city police. I opted not to scratch at the surface of her silence, to be respectful of her decision to remain quiet on the matter. But, I also did not assume that her response reflected stoicism or a lack of awareness about what was happening. I did not assume that there was not a powerful eloquence about the situation that would be uttered if I ever had the opportunity to listen to her. My prior experiences alongside youth in the past suggested quite the opposite. In fact, this entire exchange further reinforced in my mind why it is so important to create avenues for Indigenous girls to speak out safely and with all of the necessary supports. The last thing I wanted to do in this situation was increase this Indigenous young woman's vulnerability and exposure. Nonetheless, I was left thinking about what we might learn from youth like Sherry about the ways Indigenous girls are creatively navigating and negotiating the terrain of state violence if there were more spaces for them to share their knowledge. How might this allow us to interrogate settler colonialism in more complex ways and, in turn, reveal different pathways to decolonization?

[18] All names in this section have been changed to preserve anonymity.

Reflecting further on this encounter, I would also like to suggest that the violence Sherry experienced in this instance contains two discrete parts. The first one relates to the violence she has endured at the hands of the Saskatoon City Police, an egregious violation in its own right. And the second is wrapped up in Pauline's individuation and dismissal of Sherry's encounter with settler colonial violence, thereby legitimating it as part of routine behavior and misrecognizing (Bourdieu & Wacquant, 2004) it because of its predictability and familiarity. In *Violence and War and Peace*, Scheper-Hughes and Bourgeois (2004) describe how "structural violence is generally invisible because it is part of the routine grounds of everyday life and transformed into expressions of moral worth" (p. 4). For Pauline, the experience of this young woman had become entirely normalized to the point that it did not warrant additional time or attention—or even a report to her Director of Programming. It was expected. It was simply what happened. Even when I pressed the issue further, asserting that this was happening to other Indigenous girls too, she didn't seem to think there was anything she could do. She offered no explanation beyond acknowledging that this was "the way things were," nor did she consider the possibility that her own actions of turning a blind eye to the young woman's experience may, in some way, be contributing to a lack of police accountability and in turn, the relentless and vigilant policing of Indigenous youth in the Westside. At best, the underlying message communicated to this young woman was: exercise fortitude when challenged by the onslaught of racist police provocation and coercive force. Suppress your feelings of anger and vulnerability. Keep your head down. Stay out of trouble.

My point here is not to direct all of the blame towards Pauline—she is one caseworker operating within a system of structural, colonial violence—but instead to draw attention to the blatant acceptance of violent policing practices enacted against Indigenous young women in Saskatoon and to redirect us back to the importance of looking at settler colonial gender violence through the social dynamics of everyday practices, which reveal how larger orders of social force come together with micro-contexts of local power to shape material realities on the ground (Kleinman, 1997). In fact, the violation of personal liberty and insidious debasement of human dignity recounted by this Indigenous young woman, in addition to her experience of racism and public humiliation, was not news to me. Having done research and advocacy in Saskatoon for years, this story while stunning in its level of injustice is also stunningly prosaic in its *repeated* occurrence as an act of settler colonial surveillance. On numerous occasions, I have found my senses met with the following scene: a Saskatoon City Police cruiser pulled over on the side of 20th Street (or on more isolated roads, in back alleys, next to forsaken train tracks) with an Indigenous youth standing in the shadow of circulating red and blue lights, arms raised above the head or clasped behind the back. Personal belongings, sometimes broken, have been strewn about the unforgiving ground. One or two police officers are usually engaged in some form of rough "questioning," voices are often raised. The interminable power of the criminal justice system well evidenced by the material presence of guns, slash resistant gloves, bulletproof vests, handcuffs, batons, and split second radio back up. Sometimes there are dogs. The potential use of deadly force by these public-safety sentries, in instances of perceived threat, imagined or

otherwise, looms large. They hold the authority to trigger the deployment of lethal violence to maintain the safety and protection of a white Canadian citizenry, to shut down by any means necessary those whose very presence threatens the social, political, and economic structures that have birthed white power and privilege.[19] They are the city's front line drones of white settler defense. And in moments like these, time becomes dilated. Anything can happen.

Numerous youth workers have corroborated the high incidence of racial profiling and surveillance by city police that has been revealed, anecdotally, by Indigenous youth in Saskatoon. When I interviewed a Cree worker involved in counselling Indigenous youth approaching the end of their prison sentence, he told me it was commonplace for Indigenous youth to recount instances of being stopped by the police to the point of feeling deeply harassed because of the style of their clothing and the colour of their skin. He revealed, "If you live in the *core*, it's almost a certainty. They [Indigenous youth] always seem to be conscious of the presence of police. It doesn't matter where we go in the city, they are always looking out for them."

The reference this youth worker made to the geographical specificity of heightened police surveillance also signals the way that the "core neighbourhood" in Saskatoon has become coded as "Indigenous space," a frontier where "law has authorized its own absence and where the police can violate Indigenous peoples with impunity" (Razack, 2015, p. 23). Idylwyld Drive is the borderline that cuts the city longitudinally, bisecting Saskatoon into the east associated with prosperity and wealth, and the west (also known as Alphabet City because the Westside avenues have no names, just letters) associated with poverty, crime, and suffering—often tagged "ghetto territory." "This spatialized relationship," remarks Joyce Green (2011) "maintains the focus on the [I]ndigenous as needing to be controlled, for racism suggests they are ultimately not fit for civilized society" (p. 238). The targeting of Indigenous girls, and Indigenous youth more generally, by police, then, is interlinked with a criminalization of the neighbourhoods where Indigenous families live, and a deliberate categorization of these communities as simultaneously "native and degenerative" (Razack, 2002). Whiteness is able to move freely into these "projected crime zones" as a matter of exercising power over "Indigenous deviance" and ensuring the quarantining of Indigenous bodies. In the words of Razack (2015), "to mark and maintain their own emplacement on stolen land, settlers must repeatedly enact the most enduring colonial truth: the land belongs to the settler, and Indigenous people who are in the city are not of the city. Marked as surplus and subjected to repeated evictions, Indigenous people are considered by settler society as the waste or excess that must be expelled" (p. 24). In Saskatoon, the processes of gentrification, the spatial politics of safety, and the ongoing displacement of Indigenous peoples on *Cree territory within the city*, have further fuelled white invasion into Indigenous urban space.[20]

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[19] As Albert Memmi (1965) asserts, "privilege is at the heart of the colonial relationship" (p. xii).

[20] For a brief glimpse into gentrification on the Westside of Saskatoon, see Casey (2014).

Bringing the propensity of this ongoing domination into razor sharp focus, a Metis youth worker and activist disclosed the following during one of our interviews in 2007. His recitation of how the criminal justice system works as a mechanism of settler state control, and the ways Indigenous girls are particularly susceptible to the violence of this institution, warrants being quoted at length:

> "When it comes to the city police and the aboriginal youth I have worked with for close to fifteen years, or even longer… well, I have seen the abuse from city police. I've seen the ego, the attitudes, the complete injustice. I understand why young Indigenous people don't trust the police. It's all right to take some Aboriginal girl into a back alley and get a blowjob from her because what is she going to do? Because with most of these kids it's always us against them, it's us against the system. The judges don't care. The cops are a big part of the problem. The majority of the justice system in this province, in this city, is broken. I would love to see what would happen if a 14-year-old aboriginal girl told a white judge that it was me against the white cop. The cop is always going to win."

And of growing concern is the now swarming police presence in community spaces where Indigenous youth are *supposed to feel safe* through the model of "crime prevention through social development." Bronwyn Dobchuk-Land's (2015) research in Winnipeg lends considerable insight into this more recent configuration of settler colonial state power. Analogous to Winnipeg in this regard, community organizations in Saskatoon, including Indigenous organizations, are increasingly being asked to welcome police into the spaces they are trying to construct as "safe spaces" for youth.[21] Ironically, this means that Indigenous girls, and youth more generally, are encountering settler police agents even in the places where they are supposed to access youth programming—initiatives ostensibly designed to "help" them. Youth community organizations, emergency rooms, the office of a social worker, the corridors of school, recreational centers, and the street are all fair game. In Saskatoon, you can even find police, the very same state entity that was created to aid Indigenous extermination, *leading* rallies and discussions on murdered and missing Indigenous women and girls.

Thus, the persistent sensation of being hunted, of monitored movement, of freedom being truncated through institutional caging *is central to* the daily reality of being a young Indigenous woman in Saskatoon. It is not an anomaly. It is not the fictitious creation of a youthful imagination on overdrive. Through their existence as *Indigenous* girls, these young people constitute a direct threat to an already existing settler social order. A large part of the way this threat becomes contained is through state mechanisms of criminalization, policing, and incarceration that function as both regulators and producers of socially constructed notions of normativity and deviance against which Indigenous youth sociality can be measured. Judith

[21] This movement has intensified with police programs like such as the Serious Habitual Offender Comprehensive Action Plan (SHOCAP)—read targeted enforcement. The Saskatoon Police Service SHOCAP Unit, in partnership with agencies serving youth throughout the city, "*tracks* [emphasis added] the activity of a select group of young persons" (Saskatoon Police Service, n.d.).

Butler (2015) argues, within the context of black conquest in the United States, that "one way that this [white dominance] happens is by establishing whiteness as the norm for the human, and blackness as a deviation from the human or even as a threat to the human, or as something not quite human" (para. 22). Similarly, young Indigenous lives have been constituted by the Canadian state as "throw aways," lives that are expendable in the quest to maintain settler control, subaltern lives that represent everything Canada does not want to become. Racism's ratification as a way of seeing, as a mode of dominant "public perception" (para. 6) that is both recurrent and customary, everyday and systemic, gendered and sexualized (Jiwani, 2006), fuels the construction of these binaries of value on human life and, in turn, standardizes heinous state techniques of subjugation. Settler colonies are heavily reliant on the reproduction of this longstanding controlling technology because of their need to consistently extinguish Indigenous alterity—to stand firm in the march toward the endpoint of successful "elimination."

Hence, it comes as no surprise to anyone working with Indigenous girls that incidents of "conflict" with law enforcement agents are common markers of lived experience—this is where criminalization and caging enter the picture. In urban centers where Indigenous youth come into more direct and frequent contact with state institutions, clashes with the criminal justice system take on even more heightened levels. According to a report presented to The Commission on First Nations and Metis Peoples and Justice Reform:

> For Saskatchewan Aboriginal youth, conflict with the justice system was primarily urban. Similar to the Canadian data, most Aboriginal youth in Saskatchewan committed their offence of alleged offence in a city, and most planned on relocating to a city upon release. Many of the Aboriginal youth experienced conflict with the justice system in the city even though they lived on reserve. (Government of Saskatchewan, 2004, p. 104)

Incarceration rates mirror the intensity of settler colonial confrontation between Indigenous youth and the criminal justice system, although it is important to reinforce that incarceration is part of a *continuum of violence* in the criminal justice system as a whole, which begins with initial police "contact," followed by arrest, detainment, court proceedings, sentencing, jail time, and, eventually, probation orders. In 2004, the Canadian Department of Justice conducted a snapshot of Indigenous youth in custody. The report confirmed the disproportionate representation of Indigenous youth in prison, although scholars and youth advocates have been reporting this phenomenon for some time.[22] While they comprise only five per cent of the population, Indigenous youth make up 33% of young people in custody. The highest rates of incarceration are in northern and central Canada, and Saskatchewan is among the most punitive provinces, second only to the Northwest Territories (and Saskatchewan, along with Manitoba, holds the greatest number of police per capita across all of the provinces). In Saskatchewan, an astounding 87% of Indigenous women and girls make up the female prison population (Native

[22] For a list of publications regarding the criminalization and incarceration of Indigenous girls in Canada, please see Justice for Girls (n.d.).

Women's Association of Canada, 2012) and *young Indigenous youth are more likely to go to prison than finish high school* (Assembly of First Nations, 2012). Neve and Pate (2005) have argued, in fact, that the prairie provinces have witnessed some of the most egregious examples of criminalization of Indigenous women and girls. They note:

> Aboriginal women continue to suffer the devastating impact of colonization. From residential school and child welfare seizure, to juvenile and adult detention, Aboriginal women and girls are vastly over-represented in institutions under state control....in the Prairie Region most of the women and girls in prison are Aboriginal. (p. 27)

The concluding remarks emerging from Canada's 2012 periodic review, with regards to the country's adherence to the United Nations Convention on the Rights of the Child, also reiterated the criminal justice crisis signalled by the over-representation of Indigenous youth in Canadian jails (United Nations, 2012).

And the violence does not stop there.

This is not an unexplainable phenomenon

Tina Fontaine. Loretta Saunders. Cindy Gladue. Pamela George. Bella Laboucan-McLean. These names are the halting signposts of colonial gender violence in Canada. They are part of a growing, state-generated epidemic of murdered and missing Indigenous women and girls across Turtle Island. An unmistakable rendering of settler state power juxtaposed against its claims of benevolence and post-colonial calm.

In January of 2015, the Inter-American Commission on Human Rights (IACHR) released a 127-page document outlining the egregious levels of violence experienced by Indigenous women and girls in Canada. According to the report, the number of murdered and missing Indigenous women and girls is overwhelming in its scope, tallied at approximately 1200 cases. Indigenous women and girls are 8 times more likely to die of homicide than non-Indigenous women (2014, p. 49). Given that Indigenous women and girls comprise only 4.3% of the overall Canadian population, this revelation is particularly alarming.

I would caution, however, about the danger of getting caught in the numbers game—the constant focus on numbers does a particular kind of work in limiting the focus of the problem. It is vital, I would argue, that we remember that these numbers are not just abstract figures or horrific, sensationalized stories that appear in newspapers or across TV screens in the form of nightly news. Every single one of those 'numbers' corresponds to a life. These statistics are Indigenous girls and women who were integral parts of their communities, human beings who withstood brutal assaults on their bodies and spirits, and daughters, mothers, sisters, students, cousins, aunties, friends, and partners whose lives were extinguished in unconscionable ways. This vicious story of elimination, then, casts light on the devastation and collective wreckage endured by so many Indigenous families and communities across Turtle Island who are suffering

immense loss and righteously demanding justice for their loved ones, and for Indigenous peoples more broadly. But it also renders a clear, ominous picture of where Indigenous women and girls stand in the eyes of the settler colonial state of Canada.

It is my contention that Indigenous girls and women continue to "disappear" and be murdered in Canada because the state is actively engaged in ensuring this continues to happen. Violence against Indigenous women and girls is, after all, the *modus operandi* of the Canadian criminal justice system. This is not an unexplainable phenomenon. It is not a mysterious "crime problem." It is a reworking of the gender violence that has been targeting Indigenous girls and women since the point of first contact, since before Canada became Canada. It is the effect of a criminal justice system that was instrumental in the historical disempowerment of Indigenous women and girls, and a system that is relentless in its pursuit of colonial gender violence as a central feature of settler sovereignty. "Gender violence and murdered and missing Indigenous women are a symptom of settler colonialism, white supremacy and genocide," attests Leanne Simpson (2014), "symptoms of the dispossession of Indigenous peoples from our territories." The settler state of Canada has something very material to gain—the continual seizure of territory coupled with a dismantling of Indigenous political efforts centered on decolonial mobilization—with the continuance of colonial gender violence. And it is made real through a number of cunning technologies of governance, of which settler colonial policing plays an important part. Stated otherwise: as a central component of the criminal justice system, perhaps one of the most fundamental, settler colonial policing has a great deal to do with this epidemic of murdered and missing Indigenous women.

For example, state omissions lead to killings and disappearance without consequence—the complete and utter failure of the police, specifically, to respond to violence against Indigenous girls and women has created a culture of impunity for men to rape and murder at will. State actions (including violence) work in concert with targeted acts of male violence that are effectively borne of state neglect and complicity. Both the provincial police and the RCMP have failed to adequately prevent and protect Indigenous women and girls from a continuum of violence (the extinguishment of life itself being the concrete endpoint) and have aborted the responsibility to thoroughly investigate acts of violence when they are committed.[23] "Family members of murdered and missing women have described dismissive attitudes from police officers working on their cases, a lack of adequate resources allocated to those cases, and lengthy failure to investigate and recognize a pattern of violence" (Inter-American Commission on Human Rights, 2014, p. 12). Confirming allegations of Indigenous women and girls exclusion from state protection, the Report on the Aboriginal Justice Inquiry has also reiterated the ways that police have come to view Indigenous peoples not as a community deserving protection, but a community from which white society must be protected. This has led to a situation often described as one of Indigenous communities being "over-policed" but "under-protected"—

[23] The story of Bella Laboucan-McLean is particularly revealing in this regard. For the details of her case, please see Klein (2014).

positioning Canadian white society as in need of *protection from* Indigenous nations (Aboriginal Justice Implementation Commission, 1991).

Furthermore, as opposed to serving as sources of assistance and help, Indigenous women and girls are often scared to reach out to police for fear that they will be further violated through terrorizing policing practices or have to contend with the outright omission of their accounts of violence. In her exploratory research on girls in city cell lock up in Vancouver, Sue Brown (2011) heard a young Indigenous woman say,

> "So as far as just being like out on the street corner and running into police officers and stuff. They really treat women out there like shit. They really really do. And it is sad because most of the women out of there are so young. And it is like, you know, they are still very impressionable, and no one wants to be out there. I don't give a shit what anybody says. Nobody truly wants to be that way. And when you run into cops, you know, and they call you a "fucking whore" or… you know, tell you to "get your fucking ass off the street" well, I mean, that is not helping" (p. 151).

The projection of criminality cast onto Indigenous women and girls also further fuels state failure to protect them and solidifies the elision of their lived experience. During an interview of policing in the lives of Indigenous girls, Annabel Webb explained how the positioning of Indigenous girls as "criminals' makes them more prone to becoming targets of male violence. She remarks,

> "The criminalization of Aboriginal girls is defined by a pervasive assumption of delinquency, one that ensures that girls will come into frequent contact with police and are more likely to be questioned, searched, arrested, detained, and subjected to the brutality of criminal justice procedures such as strip searches, imprisonment and solitary confinement. *Perpetrators, whether they happen to be police officers or other men in the community, act with impunity because the positioning of Indigenous girls as "criminal" means that the first impulse of criminal justice response to her victimization will be to question the child's credibility.*"

Thus, breakdown in police protection and investigation, coupled with the projection of criminality onto Indigenous girls, *works to sustain* violence against Indigenous women and girls because male perpetrators believe they will be exempt from legal ramifications as a result of their actions (and they often are). Natalie Clark's intersectional based policy analysis of violence in the lives of Indigenous girls, which draws extensively on cases studies of indigenous girls' experiences, further reveals how state policies fail to protect Indigenous girls from victimization (Clark, 2012, p. 136).

The utter failure of the Canadian public to stand up and demand answers in relation to violence against Indigenous women and girls is an indication of the value Canadian society

places on their lives.[24] In many ways, they serve as the "unmournable bodies" (Cole, 2015), bearing the lethal consequences of Canada's quest to maintain the territorial power and the broad reaching control required to keep Canada a sovereign, industrial, and capitalist nation.[25] On the disposability of life in the context of relations of domination, Inuit/Taino writer Siku Allooloo (2014) attests, "the fact that society sees Indigenous women and girls as violable, as eligible targets of assault and domination, as "less than human" or, as weak, isolated and defenseless is, to my mind, the heart of the issue (para. 4).[26] It follows, then, that murder and other forms of colonial gender violence are the state's most concrete triumphs over Indigenous resurgence in the greater geopolitics of settler colonialism (Balfour, 2014).

Recasting decolonization and Indigenous freedom

A critical politics of encounter with settler colonial policing in the lives of Indigenous girls necessitates thinking through a sustained politics of decolonial transformation. Indeed, as eloquently captured by Ashon Crawley (2015) when reflecting upon Black life in the United States, "the quotidian, ordinary, everyday nature of these violent incidents should produce within us a restlessness, a desire to exist *otherwise*" (para. 4). What actions will we take to dismantle colonialism's death grip on the lives of Indigenous girls? How do we reimagine Indigenous critical praxis and decolonization when colonial gender violence sits at the center of strategies for political change? How do we ensure we are addressing the multifaceted dimensions of colonial gender violence vis-à-vis settler colonial policing in a manner that includes queer Indigenous bodies? What will Indigenous peoples' self-organizing and self-governing look like when Indigenous women and girls are leading the struggle against settler colonial rule? These are big questions, but they are questions we need to ask if we are in this fight for the long haul and if we are in it to win.

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[24] For a glimpse into white Canada's perception of Indigenous peoples' struggle for self-determination please see Angus (2013).

[25] Echoing this sentiment, Naomi Klein spoke the following words at a speech on murdered and missing Indigenous women and girls she delivered in Toronto, Ontario on December 18, 2014: "Here is one link to consider: the greatest barrier to our government's single-minded obsession with drilling, mining and fracking the hell out of this country is the fact that Indigenous communities from coast to coast are exercising their inherent and constitutional rights to say no. Indigenous strength and power is a tremendous threat to that insatiable vision. And Indigenous women really are "the heart and soul" of their communities. The trauma of sexual violence saps the strength of communities with terrifying efficiency. So let us not be naïve. The Canadian government has no incentive to heal and strengthen the very people that it sees as its greatest obstacle" (para. 45-47).

[26] Following in step, Judith Butler (2015) explains, "[w]hat we see is that some lives matter more than others, that some lives matter so much that they need to be protected at all costs, and that other lives matter less, or not at all. And when that becomes the situation, then the lives that do not matter so much, or do not matter at all, can be killed or lost, can be exposed to conditions of destitution, and there is no concern, or even worse, that is regarded as the way it is supposed to be" (para. 2).

As I mentioned at the start of this piece, as a non-Indigenous person growing up on Cree land in Saskatchewan I am in no position to be directive towards Indigenous nations about shifting political strategies and the multivariant forms of resistance to colonial occupation that already exist. What I can offer are some speculative points for consideration that I believe we should take seriously as we go about the hard work of decolonization and bending the light toward political actions and social practices that advance Indigenous freedom. These are thoughts based on important, vital lessons I have learned from Indigenous and non-Indigenous comrades alike, and are reflective of my own insights as a person of colour who knows she is living on stolen land. They are by no means exhaustive or complete. They are a series of loose starting points for deliberative dialogue about inciting the world to be otherwise than it is. And they are an ethical articulation of the political responsibility I have inherited as someone who carries a Canadian passport and calls Canada home. I hope we can build from them.

The first, and perhaps most obvious, point is that colonial gender violence is alive and well. It has not recessed into historical record or taken a back seat to other forms of violence enacted upon Indigenous nations. What all of the preceding pages tell us, rather, is that there is a war on Indigenous women and girls across Turtle Island. And an awareness of the material, everyday violence that is a core feature of being an Indigenous woman or girl in Canada pushes us, as Sarah Hunt (2015) adeptly urges, to rethink conceptions of what is politically significant within the context of Indigenous struggles for sovereignty and self-governance. It calls for a suturing together of the micro dynamics of daily life with macro political struggles for land. It demands that we bring gendered violence, police brutality, carcerality of everyday life, death of kids in care, and a willing negligence of Indigenous communities into the realm of the political and that our strategies of defense are always attentive to this materiality (Hunt, 2015, p. 4). In concrete terms, this also means that we must be moved to mobilize every time an Indigenous woman or girl is subjected to state violence and to support Indigenous communities to develop alternative pathways for addressing violence in their own communities in ways that minimize state contact. "It's in all our best interests to take on gender violence as a core resurgence project, a core decolonization project, a core of any Indigenous mobilization," says Leanne Simpson (2014, para.10). I believe this call to action is clear and also points to the way that those of us committed to eradicating colonial gender violence must operate in consensual allyship with the formidable Indigenous women and girls already paving the way.

A second and related point involves recognizing the importance of engaging critical praxis that exists outside the so-called justice and freedom offered through state mechanisms of recognition and redress. Glen Coulthard (2014) captures this succinctly when saying, "the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of capitalist, racist, patriarchal state power that Indigenous peoples' demands for recognition have sought to transcend" (p. 3). While I recognize the need for ongoing advocacy to change social policies and practices from within domestic government agencies and institutions (and this means we need people working in these spaces with a politicized understanding of Indigenous-state relations and the stronghold state institutions have on Indigenous girls), as well

as legal international bodies, I would argue it is shortsighted to assume that the state is simply going to step in and right its wrongs, regardless of how many more inquires are called or reports commissioned. If, as numerous scholars and activists have pointed out, the state is the chief perpetrator of violence in Indigenous nations, its institutions, agencies, and programs cannot be the place where justice is found, nor can strategies for eradicating colonial gender violence be rooted in these power structures. "There is no freedom to be found in a settler state, either one that would seek to give it or take it away," writes Jarrett Martineau (2014, para. 19). Alternatively, there must be a turning away from state prostrations of assistance and a *turning towards* the longstanding strength, artistic practice, intergenerational wisdom, and epistemologies that are central to Indigenous ways of life. There must be an arsenal of resistance to colonial gender violence that is rooted within nations themselves. A futurity and decolonial terrain, in other words, that operates on Indigenous frequencies.

And third, there is an urgent need to *decolonize* and *politicize* youth studies, youth programming, and almost every single initiative out there in Canada that addresses "the needs" of Indigenous youth in general, and Indigenous girls specifically. Youth studies scholars and social policy-makers have, in fact, paid very little attention to the ways that the distinct political and material formation of settler colonialism has mediated the scope and discourse through which we understand Indigenous youth experience in Canada (Lesko and Talburt, 2012). Decolonizing and politicizing this work includes a giant step away from the grossly homogenized renditions of Indigenous youth experience in the quest for Indigenous sovereignty—an elimination of the cursory, lip service attention paid to the diverse nature of the materiality of the social (Farmer, 2004). Settler colonialism impacts bodies differently depending on their social markings. Indigenous youth differentially experience injustice, a lack of protection, policing, social regulation, and state intervention, containment, and disciplinary punishment – these things operate in different ways depending on who you are. In a striking example of this diversity of experience, Billy-Ray Belcourt's (2015) recent talk, *Queer Indigenous Poltergeists*, at the North American Indigenous Studies Association Meeting in Washington D.C. in 2015, highlighted the fundamentally affective impact of settler colonialism on queer Indigenous bodies that serves as "an affective rupturing of our attachments to life, to each other, and to ourselves." In doing so, his incantation that summons the figure of the queer Indigenous poltergeist demands that we re-think the criteria for membership in a decolonial future and pay heed to the numerous ways that settler colonialism winds itself around Indigenous bodies, including through the destructive work of heteronormativity.

This also means decentering the author/researcher/advocate as the single voice of authority. If we are to understand the hidden and insidious dimensions of violent settler colonial policing in the lives of Indigenous girls, *then we need to listen to them*. If we are going take seriously the leadership role that can be assumed by Indigenous youth in the fight for Indigenous self-governance and ways of living, then we need to identify concrete ways to bring those opportunities into being. We need to take direction from the Indigenous young women in the Native Youth Sexual Health Network and the Indigenous Young Women's National Council

who are demonstrating, everyday, how Indigenous girls are *already* leaders in the struggle to end colonial gender violence, and we have to think strategically about how we can actively support them in expanding and growing this work.[27] A solid effort must be made, then, to avoid becoming tangled in Laura Berlant's (2011) web of cruel optimism and implementing tokenistic inclusionary efforts. Indigenous youth, after all, are the lived connections among history, extant colonial realities, and the unfolding of what comes next—they are, as Alexa from the Native Youth Sexual Health Network powerfully renders, the "bridges between our ancestors and the people that are ahead of us." It's time we back them in the fight for the future; a future, I would argue, that is intimately bound up with their fight for the present.

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[27] For an excellent example of this leadership, see the zine entitled, "Indigenous Young Women Lead: Our Stories, Our Strengths, Our Truths" which focuses on Indigenous young women's leadership, empowerment, solidarity building, and ending violence.

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The Effects of Police Violence on Inner-City Students

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Abstract

Nearly a thousand officer-involved killings occur each year in the United States. This paper documents the large, racially-disparate impacts of these events on the educational and psychological well-being of of public high school students in a large, urban school district. Exploiting hyperlocal variation in how close students live to a killing, I find that exposure to police violence leads to persistent decreases in GPA, increased incidence of emotional disturbance and lower rates of high school completion and college enrollment. These effects are driven entirely by black and Hispanic students in response to police killings of other minorities and are largest for incidents involving unarmed individuals.

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I Introduction

A central role of the state is to ensure public safety (Atkinson and Stiglitz, 2015). As means of achieving this, American law enforcement officers are afforded broad discretion over the use of force, and roughly a thousand individuals are killed by police each year. In addition to protecting civilians from imminent harm, these incidents may help to deter future criminal activity (Becker, 1968).

At the same time, the four largest urban riots in recent American history were all triggered by acts of police violence (DiPasquale and Glaeser, 1998).[1] Experiences with aggressive policing have been linked to unfavorable attitudes towards law enforcement, particularly among racial minorities, whose lifetime odds of being killed by police are as high as one in a thousand (Skolnick and Fyfe, 1993; Weitzer and Tuch, 2004; Brunson and Miller, 2005).[2] These attitudes are, in turn, correlated with fear (Hale, 1996; Renauer, 2007; Boyd, 2018), perceived discrimination (Brunson, 2007; Carr et al., 2007) and institutional distrust (Bobo and Thompson, 2006; Kirk and Papachristos, 2011).

Nonetheless, there exists little causal evidence of the social impacts of police use of force on local communities. Correlational analysis of police violence and neighborhood health is confounded by the fact that use of force is more likely to occur in disadvantaged areas, where homicide and poverty rates are high (Kania and Mackey, 1977; Jacobs, 1998). Researchers have attempted to address this issue by exploiting the timing of high-profile incidents: for example, the police beatings of Rodney King in Los Angeles (Sigelman et al., 1997) and Frank Jude in Milwaukee (Desmond et al., 2016) or the lethal shooting of Michael Brown in Ferguson (Gershenson and Hayes, 2017).[3] However, such landmark events were often tipping points for larger social movements, like widespread riots in Los Angeles and Black Lives Matter in Ferguson. Thus, their case studies may not be representative of the vast majority of police killings that go unreported in the media and provide limited insight into the day-to-day effects of use of force on nearby civilians. Furthermore, most existing studies examine impacts on attitudes or interactions with law enforcement and are unable to shed light on broader economic implications.

This paper seeks to document the short and long-run consequences of police killings on the

[1] These include: the 1965 Watts riots, the 1980 Miami riots, the 1992 Rodney King riots and the 2013 Ferguson riots. Police violence has also triggered large protests in other contexts. For example, in 2014, the use of tear gas against students in Hong Kong sparked protests that blockaded roadways for several months.

[2] Edwards et al. (2019) estimate that roughly one in 1,000 black men and one in 2,000 Hispanic men will be killed by police over their life course, relative to one in 3,000 white men and one in 7,500 Asian men. Among 25- to 29-year-old males, police violence is the sixth leading cause of death, behind accidents, suicides, other homicides, heart disease and cancer.

[3] Similarly, White et al. (2018) examine the impact of the Freddie Gray killing on perceptions of procedural justice. The policy implications of those findings are discussed by Lacoe et al. (2018).

educational and psychological well-being of inner-city youth. I focus on high school students, both because teenagers face crucial educational decisions and because studies suggest that even vicarious police contact during adolescence may be influential in shaping long-run beliefs and institutional trust (Winfree Jr and Griffith, 1977; Leiber et al., 1998; Hurst and Frank, 2000; Tyler et al., 2014).[4]

To estimate these effects, I combine two highly detailed and novel datasets. The first contains home addresses and individual-level panel data for all high school students enrolled from 2002 to 2016 in a large urban school district in the Southwest (the "District"). The second contains incident-level information on the universe of officer-involved killings in the surrounding county (the "County"). By geo-coding the exact location of the 627 incidents and over 700,000 home addresses, I am able to calculate each student's precise geographic proximity to police violence. Leveraging a dynamic difference-in-differences design, I then exploit hyperlocal variation in the location and timing of police killings to compare changes in well-being among students who lived very close to a killing to students from the same neighborhood who lived slightly farther away.

I find that acts of police violence have negative spillovers across a range of outcomes. In the days immediately after a police killing, absenteeism spikes among nearby students. Effects are largest for students who lived closest to the event and dissipate beyond 0.50 miles. This is consistent with the highly localized nature of police killings, nearly 80% of which went unmentioned in local newspapers.

In the medium-run, students living within half a mile of a police killing experience decreases in GPA as large as 0.08 standard deviations that persist for several semesters. That these effects stem from exposure to a single officer-involved killing and that each killing affects more than 300 students, on average, suggests the potentially traumatizing impact of police violence. As corroboration, I find that exposed students are 15% more likely to be classified with emotional disturbance – a chronic learning disability associated with PTSD and depression – and twice as likely to report feeling unsafe in their neighborhoods the following year.

In the long-run, students exposed to officer-involved killings in the 9th grade are roughly 3.5% less likely to graduate from high school and 2.5% less likely to enroll in college. Though smaller in magnitude, effects remain statistically and economically significant for students exposed in the 10th and 11th grades.

In unpacking the results, I document stark heterogeneity across race, both of the student and of the person killed. The effects are driven entirely by black and Hispanic students in

[4]Juveniles also experience far more frequent police interactions than other populations (Snyder et al., 1996).

response to police killings of other underrepresented minorities. I find no significant impact on white or Asian students. I also find no significant impact for police killings of white or Asian suspects. These differences cannot be explained by other contextual factors correlated with race, such as neighborhood characteristics, media coverage or other suspect and student observables. However, the pattern of effects is consistent with large racial differences in concerns about use of force and police legitimacy.[5]

To further explore mechanisms, I exploit hand-coded contextual information drawn from District Attorney incident reports and other sources. I find that police killings of unarmed individuals generate negative spillovers that are roughly twice as large as killings of individuals armed with a gun or other weapon. This difference is statistically significant and unattenuated when accounting for other observable suspect, neighborhood and contextual factors. These findings suggest that student responses to police killings may be a function not simply of violence or gunfire *per se* but also of the perceived "reasonableness" of officer actions. Consistent with this, I find that the marginal effects of criminal homicides are only half as large as those of police killings. Furthermore, unlike with police violence, the effects do not vary with the race of the person killed. While students are only affected by police killings of blacks and Hispanics, they respond similarly to criminal homicides of whites and minorities.

This paper makes four main contributions. First, it documents the large externalities that police violence may have on local communities. My findings suggest that, on average, each officer-involved killing in the County caused three students of color to drop out of high school. As fatal shootings comprise less than one-tenth of one percent of all police use of force encounters (Davis et al., 2018), this is likely a lower bound of the total social costs of aggressive policing. While estimating the effects of less extreme uses of force is complicated both by measurement error and by their relative prevalence, research suggests that these interactions are also highly salient to local residents (Brunson and Miller, 2005; Brunson, 2007; Legewie and Fagan, 2019) and are perhaps more likely to be exercised in a racially-biased manner (Fryer Jr, 2019).[6]

Second, this paper complements a growing body of research demonstrating how perceived

[5]A 2015 survey found that 75% of black respondents and over 50% of Hispanic respondents felt police violence against the public is a very or extremely serious issue, while only 20% of whites reported the same (AP-NORC, 2015). Similarly, Bureau of Justice Statistics show that even conditional on experiencing force, minorities are significantly more likely than whites to believe that police actions were excessive or improper (Davis et al., 2018).

[6]As Fryer Jr (2019) states, "data on lower level uses of force" are "virtually non-existent." Causal identification is further complicated by the fact that routine tactics like stop-and-frisk are often explicitly determined by policing objectives and thus more likely to be endogenous with changes in neighborhood conditions and law enforcement strategy.

discrimination may lead to "self-fulfilling prophecies" in education (Carlana, 2019), labor markets (Glover et al., 2017) and health care (Alsan and Wanamaker, 2018).[7]. While empirical evidence of racial bias is mixed (Fryer Jr, 2019; Nix et al., 2017; Knox and Mummolo, 2019; Johnson et al., 2019), the vast majority of blacks and Hispanics in America believe that police discriminate in use of force (Pew Research Center, 2016, 2019; Dawson et al., 1998; AP-NORC, 2015).[8] Though more work is needed, the pattern of results suggests that the educational spillovers of officer-involved killings may be driven in part by perceptions of injustice surrounding these events.

Third, this paper builds upon existing research measuring the short-run impacts of criminal violence on children (Sharkey, 2010; Sharkey et al., 2012, 2014; Beland and Kim, 2016; Rossin-Slater et al., 2019; Carrell and Hoekstra, 2010; Monteiro and Rocha, 2017; Gershenson and Tekin, 2017).[9] However, in contrast to other forms of violence, the explicit purpose of law enforcement is to improve public outcomes and the directional impact of aggressive policing is *ex ante* far more ambiguous. Thus, my findings serve not simply as an exercise in quantifying the costs of violence but rather as important inputs for pressing policy discussions around police oversight and officer use of force.

Finally, this paper provides further insight into the link between neighborhoods and economic mobility (Katz et al., 2001; Chetty et al., 2016). Chetty et al. (2020) find that intergenerational mobility differs dramatically between blacks and whites, even for children from the same neighborhood and socioeconomic background. Consistent with research by Derenoncourt (2018) documenting a negative correlation between police presence and black upward mobility in Great Migration destinations, my results suggest that law enforcement may play an important role in explaining this racial disparity. This is not only because minorities are more likely than whites to experience police contact but also because, conditional on contact, minorities may be more negatively affected by those interactions. Understanding these effects and disentangling them from correlated factors like crime and poverty is critical to the development of policies aimed at addressing persistent racial gaps across a wide range of domains.

The remainder of this paper is organized as follows: Section II describes the background and data, Section III discusses the identification strategy and provides evidence of its validity,

[7]It also relates to work by Chetty et al. (2020), who find that implicit bias measures and Google searches of the "n" word strongly predict racial disparities in income mobility, and by Charles and Guryan (2008), who find that General Social Survey measures of prejudice are correlated with black-white wage gaps in a state.

[8]For example, in a 2015 national survey, 85% of black respondents and 63% of Hispanic respondents reported believing that police are more likely to use force against a black person. Similar shares reported believing that police "deal more roughly with members of minority groups."

[9]Other work examines the impact of violence on other margins, like wages (Aizer, 2007).

Section IV presents primary estimation results for academic achievement and psychological well-being, Section V explores mechanisms by estimating differential effects by race and incident context and by comparing the effects of police killings to criminal homicides, Section VI examines long-run effects on educational attainment, and Section VII concludes.

II Data

A Police Killings Data

Incident-level data on police killings come from a publicly available database compiled by a local newspaper, which chronicles all deaths in the County committed by a "human hand." Whether an officer was responsible for the death is based on information from the coroner and police agencies as well as from the newspaper's own investigation. For each incident, database records the name, age and race of the deceased as well as the exact address and date of the event. In total, the data contains 627 incidents from July 2002 to June 2016.

I supplement this data with contextual details drawn from District Attorney incident reports. Each report includes a detailed description of the event based on forensic and investigative evidence as well as officer and witness testimonies. Reports also provide a legal analysis of officer actions. DA reports are not available for incidents that occurred prior to 2004 or that are still under investigation. For killings without DA reports, I searched for incident details from police reports and other sources.

Of the 627 sample incidents, I was able to obtain contextual information for 556 killings: 513 from DA reports and 43 from other sources. In each case, I read and hand-coded reports to capture whether a weapon was recovered from the suspect and if so, what type. In cases where a gun was found, I additionally captured whether the suspect had fired their weapon at officers or civilians during the police encounter or immediately before (for example, in cases where police were dispatched for an active shooter).

It is worth noting that these measures provide an admittedly incomplete picture of the surrounding events, which often involve imperfect information and split-second decisions. In many cases, police actions were predicated on faulty or misreported information. For example, in 2010, a woman called 911 to report that a man with a gun was sitting in her apartment stairwell. Officers arrived and shot the man, but he was actually holding a water hose nozzle. Similar situations arose when police were confronted by individuals armed with firearms that turned out to be replicas. In other cases, killings were precipitated by seemingly innocuous encounters that escalated unexpectedly. For instance, in 2014, patrol officers attempted to stop a man for riding a bicycle on the sidewalk. Rather than complying, the

man grabbed an officer's gun and was shot by the officer's partner. Nonetheless, information about weapon type and discharge has the benefit of being objectively verifiable and can be found in all available incident reports. These details are also directly factored into legal assessments of police actions as well as community perceptions of the "reasonableness" of force (Brandl et al., 2001; Braga et al., 2014).

Panel A of Table I provides a summary of the police killings data. 52% of suspects were Hispanic, 26% were black, 19% were white and 3% were Asian.[10] Relative to their county population shares, black (Hispanic) individuals are roughly 4 (1.6) times more likely to be killed by police than whites, who are in turn 3 times more likely to be killed than Asians. The vast majority of individuals (97%) were male. The average age at death was 32 years old. Only 10% of individuals were of school age (i.e., 19 or younger) and none were actively-enrolled District students.

Consistent with national statistics, 54% of suspects were armed with a firearm (including BB guns and replicas), while another 29% were armed with some other type of weapon. This includes items like knives and pipes as well as cases in which the individual attempted to hit someone with a vehicle. The remaining individuals, nearly 20% of the sample, were completely unarmed. This is similar to the share of suspects who actively fired at officers and civilians (22% of all suspects; 41% of gun-wielding suspects).

Notably, the vast majority of incidents received little or no media coverage. Only 22% of sample killings were ever mentioned in any of six local newspapers (including one of the largest newspapers in the country) and only 13% were mentioned within 30 days of the event.[11] Conditional on being reported in a newspaper, the median number of articles is two. Only two of the 627 incidents generated levels of media coverage anywhere near that of recent nationally-reported killings.[12]

Examining contextual factors separately by race, black and Hispanic suspects were younger on average than white and Asian suspects (31 vs. 38 years old, respectively) and more likely to possess a firearm (58% vs. 36%). However, rates of media coverage are identical between groups (22%), as are the median number of mentions, conditional on coverage.

Regardless of demographics or circumstance, involved officers were rarely prosecuted. Of the 627 incidents, the District Attorney pursued criminal charges against police in only one case.[13] This is consistent with national statistics, which find that criminal charges were filed

[10]Race categories are mutually exclusive.

[11]I searched for each incident by suspect name in six local newspapers. Combined, the papers circulate roughly 1 million copies each day in the County and surrounding area.

[12]Those killings were each cited in more than 200 articles. All other killings received fewer than 30 mentions.

[13]Charges were not pressed in that instance until after the end of the sample period.

against police in fewer than half a percent of all officer-involved shootings.

B Student Data

The District administrative data contains individual-level records for all high school students ever enrolled in the District from the 2002-2003 to 2015-2016 academic years. In total, the dataset contains over 700,000 unique students. All student information is anonymized. For each student, I have detailed demographic information including the student's race, gender, date of birth, parental education, home language, free/subsidized lunch status and proficiency on 8th grade standardized tests. The data also contains each student's last reported home address while enrolled in the District.[14]

The dataset includes a host of short and long-run measures of academic achievement. Semester grade point average is calculated from student transcript data. I code letter grades to numerical scores according to a 4.0 scale. I then average grades in math, science, English and social sciences – the subjects used to determine graduation eligibility – by student-semester to produce non-cumulative, semester grade point averages. Daily attendance for every student is available from the 2009-2010 school year onwards. Each student-date observation contains the number of scheduled classes for which a student was absent that day. This information is used construct a binary indicator for whether a student was absent for any class on a given day (Whitney and Liu, 2017).[15]

The primary measures of educational attainment are high school graduation and college enrollment. Graduation is defined as receiving "a high school diploma or equivalent" from the District.[16] I am unable to distinguish between diploma types. Information on whether students enrolled in post-secondary schooling is available for those that graduated from the District between 2009 and 2014 and comes from the National Student Clearinghouse, which provides enrollment information for institutions serving over 98% of all post-secondary students in the country.

The data also contains two sources of information regarding student mental health. From the 2004 school year onwards, I observe the date students were designated by the District as "emotionally disturbed," a federally certified learning disability that "cannot be explained by intellectual, sensory or health factors" and that qualifies for special education accom-

[14]Because the data does not track previous addresses, I do not observe if a student moved within the District. However, as I discuss in Section III, this is unlikely to be a serious source of bias.

[15]Because attendance data is sometimes missing for some classes but not others within a given student-date, using any absent classes requires less imputation. However, results are robust to coding absenteeism based on all classes on a given date.

[16]The dataset does not contain information on any years of schooling or diplomas that a student obtained at high schools outside of the District. However, it does contain "leave codes" for students who transferred out of the District before graduating, which allows me to test for differential attrition.

modations. This data is used to create student panel data indicating whether a student was classified as "emotionally disturbed" in a given semester. The second source contains student-level responses from a District-wide survey for the 2014-2015 and 2015-2016 academic years. Of particular interest to this study, the survey includes three questions examining feelings of school and neighborhood safety.[17]

Panel B of Table I provides summary statistics for the student data. The District is comprised primarily of underrepresented minorities. 86% of students identify as either black or Hispanic, while only 14% are white or Asian.[18] The majority of students come from disadvantaged households, with 69% qualifying for free or subsidized lunch and fewer than 10% with college-educated parents. Roughly 40% of students demonstrated basic or higher levels of proficiency on 8th grade standardized tests.

Relative to the full sample, students who lived within 0.50 miles of an incident during high school (i.e., the treatment group) are more likely to be Hispanic and to qualify for free lunch, and less likely to speak English at home or to have college-educated parents. However, these students look quite similar, on average, to students in the same Census block groups but more than 0.50 miles away, who comprise the effective control group in my analysis.[19] As shown in the "Area" column of Table I, control students in treated neighborhoods come from similar racial and household backgrounds as treated students, and are in fact, slightly less likely to be proficient or to have college-educated parents. This similarity is an important feature of the research design that helps to bolster internal validity, particularly when comparing longer-run outcomes.

III Empirical Strategy

A Exposure to Police Killings

The primary obstacle to identification is that police killings are not random and may be more likely to occur in disadvantaged neighborhoods where poverty and crime are high. Thus, a cross-sectional comparison of students from parts of the County where police shootings are relatively prevalent and students from parts of the County where they are not could be confounded by correlated neighborhood characteristics. Furthermore, if changes in local

[17] Responses are answered along a Likert scale ranging from one to five. While the survey is not mandatory, it is typically administered during school hours leading to response rates above 75%.

[18] Demographics differ from those of the county as a whole, which is comprised of approximately 48% Hispanics, 9% blacks, 28% non-Hispanic whites and 14% Asian.

[19] As my preferred estimating equation includes Census block group-semester fixed effects, causal identification comes from comparing treatment and control students in the same Census block group, which average roughly one square mile in area.

poverty, crime or other unobserved factors predict police killings, biases could remain even when including student fixed effects in panel analysis.

The address this, I exploit hyperlocal variation in exposure to killings *within* neighborhoods. In essence, identifying variation comes from comparing changes over time among students who lived very close to a police killing to students who lived slightly farther away but in the same neighborhood. Thus, the two groups come from similar backgrounds and were likely exposed to similar local conditions, except for the killing itself.

The plausibility of strategy is aided by two factors. The first is that police killings are quite rare and difficult to predict. Over 300,000 arrests and nearly 60,000 violent crimes occur in the County each year, compared to fewer than 50 officer-involved killings. Furthermore, many police killings were entirely unaccompanied by violent crime. Roughly 20% of incidents involved unarmed individuals, approximately the same share as those involving armed suspects who fired at others. Thus, while underlying neighborhood conditions may lead certain areas to experience more crime or to be more heavily policed, the exact timing and location of officer-involved shootings within those neighborhoods is plausibly exogeneous.

The second factor in support of my empirical strategy is the under-reported nature of police violence. In contrast to the handful of incidents that attracted national attention in recent years, the vast majority of police killings received no media coverage. Thus, spatial proximity is likely to be highly correlated with even learning about the existence of a police killing. This provides meaningful treatment heterogeneity within neighborhoods.

Graphical Evidence

If students are affected by police killings, one might expect to see changes in school attendance in the days following these events. If awareness of police killings is limited to local communities or if the effects are otherwise correlated with geographic proximity (due to social networks, visceral effects of witnessing the incident, etc.), then these changes should dissipate with distance from the incident.

To test this, Figure I examines the raw absenteeism data. Panel A depicts the absenteeism gradient of distance, separately for week before police killings and the week after (including the incident date). Specifically, I estimate local polynomial regressions of daily absenteeism on the distance between a student's home and the incident location. The estimation sample is comprised of the pooled set of observations within two weeks of each incident, where distance and relative time are re-defined within each window.[20]

[Figure I about here.]

[20]This analysis is restricted to killings from the 2009-2010 school year onward, the period for which daily attendance data is available.

The week prior to a killing, the gradient is relatively flat. That is, attendance patterns for students who lived very close to where the event would occur are quite similar to those who lived farther away. However, in the week after a police killing, absenteeism spikes among nearby students. This uptick is largest for those who lived closest to the incident and fades with distance. The pre- and post-killing gradients converge at around 0.50 miles and are roughly parallel from there outward. These results are quite consistent with Chetty et al. (2018), who find that "a child's immediate surroundings – within about half a mile – are responsible for almost all of the association between children's outcomes and neighborhood characteristics."

Panel B of Figure I then depicts an event study of absenteeism, separately for students who lived nearby (within 0.50 miles) and students who lived farther away (between 0.50 miles and 3.0 miles). I estimate local polynomial regressions of absenteeism (residualized by calendar date) on the number of days before and after each event. In the days leading up a police killing, absenteeism is virtually identical both in level and trend between the two groups. In the immediate aftermath of these events, absenteeism increases sharply among nearby students but remains smooth among those farther away.

Taken together, the two figures highlight the hyperlocal nature of exposure, suggesting that students are affected by police killings that occur within 0.50 miles of their homes, and that students living farther away may serve as a valid control for this group.[21] They also support the exogeneity of police killings. For these changes to be driven by unobserved factors, one would have to believe that those confounds coincided with the exact dates and locations of the police killings. Given that the full sample includes over 600 incidents spread across fifteen years and thousands of square miles, this seems unlikely.

B Estimating Equation

To estimate effects on my primary measure of student performance – semester GPA – I exploit the same spatial and temporal variation using a flexible difference-in-differences (DD) framework. This model allows me to include individual fixed effects to account for level differences between students as well as neighborhood-time fixed effects to control for unobserved area trends or shocks, which may be of greater concern when examining outcomes that are measured less frequently and over longer time horizons than daily attendance.

Drawing on the graphical evidence, the treatment group is comprised of students who lived within 0.50 miles of any police killing that occurred during their District high school career. On average, this captures 303 students per incident. Roughly 20% of the sample is

[21] As I will demonstrate in the Section IV, the flatness of the distant gradient also suggests that estimation results are insensitive to the choice of control bandwidth beyond 0.50 miles.

ever-treated based on this definition. The control group consists of students whose nearest police killing during their District tenure was between 0.50 miles and 3 miles away from their home. As I will demonstrate later, estimates are insensitive to alternative definitions of the control group, but increase in magnitude as the treatment bandwidth narrows to students living closest to a killing.

I then estimate the following base equation on the student panel data:

$$y_{i,t} = \delta_i + \lambda_{n,t} + \omega_{c,t} + \sum_{\tau \neq -1} \beta_\tau Shoot_\tau + \epsilon_{i,t}, \tag{1}$$

where $y_{i,t}$ represents semester GPA of individual i at semester t. δ_i are individual fixed effects and $\lambda_{n,t}$ are neighborhood-semester fixed effects. In my primary specification, neighborhood is defined by Census block group, which measure roughly one square mile in area. $\omega_{c,t}$ are cohort-year fixed effects, which account for grade inflation as students progress through high school. $Shoot_\tau$ are relative time to treatment indicators, which are set to 1 for treatment students if time t is τ periods from treatment.[22] For the 15% of treatment students who were exposed to multiple killings during their high school tenure, treatment is defined by the earliest nearby killing.[23] The coefficients of interest (β_τ) then represent the average change between time τ and the last period before treatment among students exposed to police violence relative to that same change over time among unexposed students in the same neighborhood. Drawing on Bertrand et al. (2004), standard errors are clustered by zip code, allowing for correlation of errors over time within each of the sample's 219 zip codes.[24]

Crime and Policing

A primary threat to identification is that unobserved changes in local crime or policing activity may explain both the presence of police shootings and changes in academic performance. However, because I am able to account for time trends at the neighborhood-level, any potential biases would have to be hyperlocal, differentially affecting students in the same Census block group. To test this, I use a block-level analogue of Equation 1 to examine whether Census blocks that experienced police killings also saw differential changes in homicides, crimes or arrests in the prior or following semesters.[25]

[22] Killings from January to June are mapped to the spring semester, while those from July to December are mapped to the fall semester.

[23] In robustness analysis, I also drop students exposed to multiple killings and find similar results.

[24] As shown in the Appendix, results are robust to different methods of calculating standard errors, such as clustering by school or Census tract and multi-way clustering by zip code and time (Cameron et al., 2012).

[25] While data on homicides is available for the entire sample, information for arrests and non-homicide crimes is only available from 2010 onwards.

These results are shown in Appendix Figure A.I. In each case, I find little evidence of differential trends prior to police shootings. This supports the plausible exogeneity of police killings, after conditioning on block group-time. Following acts of police violence, I also find little evidence of differential changes in crimes or arrests between the streets where those incidents occurred and other areas in the same neighborhood. Point estimates for reported crimes never exceed 0.31 in magnitude, less than 10% of the sample mean (3.16 reported crimes per block-semester). Furthermore, six of the eight post-treatment estimates are negative. Thus, if local crime and student performance are negatively correlated, potential biases would drive treatment estimates for GPA upwards (i.e., towards zero). Similarly, all post-treatment estimates for homicides and arrests are insignificant and more than half are negative in sign.

This does not mean that police violence has no impact on crime. It is possible that the deterrence effects of police shootings are not localized to the specific blocks in which they occur, but are instead distributed throughout an entire precinct or city. These changes would then be absorbed by the neighborhood-time fixed effects in the difference-in-differences model. While a thorough investigation of the relationship between police use of force and crime is outside the scope of this paper, these findings reinforce the exogeneity of police killings and demonstrate that differential shocks in local crime or policing activity are unlikely to bias my treatment estimates.[26]

Selective Migration

Another potential threat is selective migration, as exposure to police violence may cause treated students to relocate or drop out of school. The latter is an outcome of interest in its own right, which I will examine directly in Section VI. Of greater concern are students who relocate within the county while remaining enrolled at the District. Because the data only contains a student's most recent address, students who were exposed to violence at their previous addresses may be incorrectly marked as control, or vice versa.

However, 2006-2010 ACS data suggests that any measurement error is uncorrelated with treatment and would simply bias my estimates towards zero. 86.6% of individuals living in Census block groups where a police shooting occurred reported residing at the same house one year prior, virtually identical to the 86.8% tenure rate among those living in block groups that did not experience a shooting ($p = 0.628$). Even if measurement error was correlated with treatment, the inclusion of student fixed effects would account for any level biases that might arise due to migration – such as if high-achieving students were more likely to re-locate

[26] As corroboration, results in Section IV show that my primary treatment estimates are robust to directly controlling for homicides, crime and arrests.

following exposure.[27]

IV Main Results

A Academic Performance

I first examine the effects of exposure to police killings on academic performance by estimating Equation 1 on semester GPA. The omitted period is the last semester prior to treatment. Estimates are displayed in Figure II.

[Figure II about here.]

Prior to shootings, I find little evidence of differential group trends. For $\tau < 0$, all treatment coefficients are less than 0.012 points in magnitude and never reach statistical significance, even at the 10 percent level. Pre-treatment estimates are also jointly insignificant ($F = 0.69, p = 0.655$). This is consistent with the exogeneity of police killings, which are rare events that are not preceded by observable changes in local crime or policing activity.

Following shootings, grade point average decreases significantly among students living nearby. GPA declines by 0.04 points in the semester of the shooting and by between 0.07 and 0.08 points in the following two semesters (GPA mean=2.08, SD=1). Effects then gradually dissipate, reaching insignificance five semesters after exposure. As I will discuss in Section VI, this does not mean that there are no long-run effects of exposure. If police violence causes affected students to drop out, treatment estimates on semester GPA would mechanically converge to zero as relative time increases.[28]

To place these effects in context, the mean post-treatment estimate of -0.030 SD is larger in absolute magnitude than the average impact of randomized interventions providing student incentives (0.024 SD), low-dosage tutoring (0.015 SD) and school choice/vouchers (0.024 SD) found in the literature (Fryer Jr, 2017). Alternatively, the observed effects predict a roughly 1.5 percentage point decrease in graduation rate, suggesting that changes in achievement may have significant consequences for long-run educational attainment.

Figure III presents results from estimation using alternative definitions of treatment and control groups. In Panel A, I vary the control bandwidth, holding fixed treatment at 0.50

[27]While this does not rule out the existence of other forms of non-classical measurement error, the data suggests that intra-county migration is unlikely to be a serious confound. In Appendix Figure A.II, I find limited evidence of increased intra-District transfers among schools that experienced police killings in their catchment zones, as would be expected if shootings caused students to move to safer neighborhoods.

[28]Additionally, if affected students are tracked into less rigorous classes, grades could rise even if academic performance or aptitude remains depressed.

miles. Results are highly stable as the control group shrinks from students living within 3 miles of a killing to those living within 1 or 2 miles from an incident. This is consistent with the absenteeism figures, which found relatively flat gradients of distance in student attendance beyond 0.50 miles, and demonstrates robustness to the choice of control group.

[Figure III about here.]

In Panel B, I instead vary the treatment bandwidth, defining exposure at 0.25, 0.375 and 0.50 miles. In all cases, the control group is comprised of students living between 0.50 and 3 miles from an incident. Again, I find little evidence of differential pre-trends and significant decreases in GPA coinciding with exposure to police killings. However, comparing results across models, magnitudes increase monotonically as the treatment bandwidth is tightened. Estimates for the semester after treatment rise from 0.08 points when exposure is defined at one-half mile, to 0.11 points at three-eighths of a mile and 0.16 points at one-quarter mile.

This is again consistent with the absenteeism figures and suggests that students living closest to police killings are most detrimentally affected. In light of the under-reported nature of these events, one explanation for the localized effects may be differences in information. That is, individuals living more than a few blocks from a killing may be completely unaware of its existence. It is also possible that even among students that knew about an incident, those that personally knew the suspect or directly witnessed the violence may be more negatively impacted.

Though I cannot fully disentangle these two channels, Appendix Figure A.III compares average treatment effects for police killings that received media coverage and those that did not. I find nearly identical point estimates in each case, suggesting that more widely-known incidents do not necessarily have larger educational spillovers among local residents. Given that only 15 percent of media-covered incidents were mentioned in more than five newspaper articles, one explanation for the similar effects is that my measure of media coverage is only weakly correlated with information dissemination. However, as I discuss in Section V, effect sizes do increase with the demographic similarity of students and suspects, suggesting that informal networks or personal affiliation may be a more salient mediating channel.

The remainder of Figure A.III contains other heterogeneity analysis. I recover larger treatment estimates for male students as well as for students with less educated parents or lower 8th grade test scores, suggesting that lower-achieving and more disadvantaged students may be most affected by exposure to police killings. It is also possible that these differential impacts are driven in part by racial heterogeneity, which I will explore in detail in Section V.

Robustness

Panel A of Table II demonstrates robustness to a host of alternative specifications. Column 1 presents my preferred specification using a simple post-treatment dummy. To address possible biases due to local crime, Column 2 adds controls for the number of criminal homicides in a Census block-semester. In Column 3, I additionally add time-varying controls for the number of arrests and reported crimes in a block, restricting the sample to 2010 onwards (i.e., the period when crime and arrests data are available). To test robustness to alternative definitions of neighborhood, Column 4 replaces the semester by Census block group fixed effects with semester by Census tract fixed effects (there are roughly 2.6 block groups per tract). Column 5 instead controls for neighborhood time trends using arbitrary square-mile units obtained from dividing the County into a grid. To demonstrate that the effects are not driven by multiply-treated students, Column 6 drops the 15% of treatment students that were exposed to more than one police killing. To address potential differential migration *into* the sample, Column 7 drops students that first entered the District in the 10th to 12th grades. In all cases, I recover similar average treatment effects on student GPA of around -0.20 to -0.30 points.

[Table II about here.]

The Appendix contains additional robustness checks and analysis. Table A.I shows results using alternative calculations of standard errors (i.e., multi-way clustering with zip code and year and clustering by school catchment or tract). In all cases, I recover similar results with insignificant estimates prior to treatment and highly significant estimates in the semesters following police killings. As the paper's primary estimates pool across students exposed at different grades, Figure A.IV replicates the analysis separately for students exposed in the 9th, 10th, 11th and 12th grades and finds that exposure to police violence leads to decreased GPA across each subsample.

To test whether the documented effects are specific to the timing and location of the sample incidents, I run a series of permutation tests. In each regression, I first randomize the location and date of 627 placebo killings within the sample area and period. Treatment and control groups are generated as before and average treatment effects are estimated using Equation 1 and a single post-treatment dummy. Figure A.V presents a histogram of the coefficient of interest for each of 250 tests. The red vertical line benchmarks the estimated coefficient using the true sample. Of the 250 placebo regressions, only four produce estimates greater in absolute value than the true estimate of -0.027 points.

B Psychological Well-Being

I next explore effects on psychological well-being using data on clinical diagnoses of emotional disturbance. Emotional disturbance (ED) is a federally certified disability defined as a "general pervasive mood of unhappiness or depression," "a tendency to develop physical symptoms or fears," or "an inability to learn," which "cannot be explained by intellectual, sensory, or health factors." While there is no single cause of emotional disturbance, its symptomatology and incidence are strongly linked with post-traumatic stress disorder (Mueser and Taub, 2008). Figure IV displays results from estimation of Equation 1 on incidence of ED under my preferred specification.

[Figure IV about here.]

I find little evidence of differential pre-trends between treatment and control students (F-test of joint significance: $F = 1.15, p = 0.334$). However, students exposed to police violence are significantly more likely to be classified as emotionally disturbed in the following semesters. Though the treatment estimates are small, ranging from 0.04 to 0.07 percentage points, they are highly significant and represent a 15% increase over the mean (0.5% of sample students are classified with ED in a given year). As demonstration of robustness, Panel B of Table II shows similar effects under alternative specifications.

Changes in emotional disturbance are also highly persistent with little drop-off several semesters after exposure. This is likely due to two factors. First, emotional disturbance and psychological trauma are chronic conditions and often last for several years after the inciting incident (Friedman et al., 1996; Famularo et al., 1996). Second, ED designations are sticky. While designations are reviewed by the District each year, comprehensive re-evaluations are only required every three years. Thus, the drop-off in effect observed seven semesters after treatment coincides precisely with the timing of triennial re-evaluations for students diagnosed shortly after exposure.

While these results are consistent with the possible traumatizing effects of police violence, they could also be driven by changes in school reporting or detection of ED rather than actual incidence of it. However, as shown in Appendix Table A.II, I find that exposure to police killings also leads to changes in self-reported feelings of safety. In particular, nearby students are twice as likely to report feeling unsafe outside of school the year after a killing. This analysis, which draws on responses from the District's annual survey, suggests that exposure to police violence does impact students' underlying psychological well-being. It also provides causal evidence in support of recent work by Bor et al. (2018), who examine cross-sectional survey data and find that police killings of blacks are linked to lower self-reported mental

health among black men living in the same state.[29]

Given that students are not regularly screened for ED and designations are only made after an intensive referral process, these estimates likely represent a lower bound of the true psychological impacts of police violence.[30] Epidemiological studies estimate that between 8% and 12% of all adolescents suffer from some form of emotional disturbance (U.S. Department of Education, 1993) — more than fifteen times the diagnosed rate among District students.

The results also provide important insight into the observed effects on academic performance. Consistent with recent work demonstrating that violence affects cortisol levels (Heissel et al., 2018) and that cortisol predicts test performance (Heissel et al., 2018), my findings suggest that decreases in GPA may be driven in part by psychological trauma. However, in addition to maintaining worse grades than their peers (Wagner, 1995), students with ED are 50% less likely to graduate and significantly more likely to suffer from low self-esteem and feelings of worthlessness, suggesting that the long-run effects of police violence may extend beyond in-class performance (Beck et al., 1996; Carter et al., 2006).[31]

V Mechanisms

To better understand the mechanisms behind these effects, I exploit rich heterogeneity in the data. Given large racial differences in attitudes towards law enforcement as well as significant variation in the police killings themselves, I explore heterogeneous effects by race and incident context. I then directly compare the effects of police use of force to those of criminal homicides.

A Racial Differences

I first explore differential responses by race. I estimate Equation 1 on GPA, separately for each race subsample. For sake of power, I pool white and Asian students together. Panel A of Figure V displays treatment coefficients for a simple post-treatment dummy.

[Figure V about here.]

[29]Similarly, work by Moya (2018) and Callen et al. (2014) demonstrates that exposure to violence more generally may lead to changes in risk aversion. Rossin-Slater et al. (2019) find that youth anti-depressant use increases following local school shootings.

[30]Students are only classified as ED after 1) pre-referral interventions have failed, 2) referral to Special Education and 3) a comprehensive meeting between the student's parent, teachers and school psychologist. This process can be quite costly to the District, as students with ED often receive their own classrooms and are sometimes transferred to private schools or residential facilities at the District's expense.

[31]Emotional disturbance is also associated with limited attention spans (McInerney et al., 1992) and impaired cognitive functioning (Yehuda et al., 2004)

As shown, I find stark differences in effects by student race. Black and Hispanic students are significantly affected by police killings and experience average GPA decreases of 0.038 and 0.030 points, respectively. However, exposure to police killings has no impact on white and Asian students with a treatment coefficient of essentially zero (-0.003 points).

One possible explanation for the differing effects by student race is that black and Hispanic students may come from more disadvantaged backgrounds. Given earlier evidence of heterogeneous effects by parental education and 8th grade achievement, those same factors could potentially account for the results found here.

To test this, I create a new sample of black and Hispanic students that matches the distribution of the white and Asian students. I match the former set of students to the latter based on free lunch qualification, parental education (HS degree, less than HS, more than HS), 8th grade standardized test score (by pentile), cohort (within 3 years) and school. To maximize power, I randomly select up to 8 black or Hispanic student per each white or Asian student and weight observations by one over the number of matches to maintain sample balance on match characteristics. Table A.III provides a descriptive comparison of the matched and unmatched samples as well as estimation results for each. Notably, estimated effects for the original minority sample are quite similar to those for the re-weighted minority sample (-0.031 points vs. -0.029 points) and both are far larger than the zero estimate for the white sample. This suggests that differences in family background, prior academic achievement, school and cohort explain very little of the gap in minority and non-minority responses to police killings.

These results provide evidence of the disproportionate burden police violence may have on underrepresented minorities, even conditioning on exposure. This is consistent with work by Gershenson and Hayes (2017), who examine the 2013 Ferguson riots and find that test score decreases were largest in majority-black schools. It is also consistent with a host of research demonstrating that race is the single strongest predictor of perceptions of law enforcement (Taylor et al., 2001). Even controlling for other factors, blacks and Hispanics are significantly more likely to believe that police use of force is excessive or unjustified (Weitzer and Tuch, 2002; Leiber et al., 1998).

A similar pattern emerges when examining heterogeneity by suspect race. As shown in Panel B of Figure V, killings of black and Hispanic suspects have significant spillovers on academic achievement (-0.031 points and -0.021 points, respectively). This is not true of incidents involving white or Asian fatalities.[32] The treatment estimate for killings of whites and Asians is essentially zero (0.003 points).

[32]Given that Asians comprise only 3% of the police killings sample, I again pool those individuals with whites.

In interpreting these results it is important to note that suspect race is obviously not randomly assigned. Thus, while police killings of blacks and Hispanics exert demonstrably larger effects than killings of whites and Asians, these differences could be driven by factors correlated with suspect race rather than race itself. For example, it is possible that the former are particularly harmful because they occur in more disadvantaged areas or because the person killed was more likely to have been from the neighborhood or known in the community.

Thus, to better understand the salience of suspect race, I introduce flexible controls allowing for differential treatment effects along a range of neighborhood, incident and suspect characteristics. In particular, I estimate the following equation on the full sample:

(2)

$$y_{i,t} = \delta_i + \lambda_{n,t} + \omega_{c,t} + \beta_{BH} Post \times Shoot \times BlackHispanic + \beta_{WA} Post \times Shoot \times WhiteAsian + Post \times Shoot \times \boldsymbol{X_i}\boldsymbol{\gamma} + \epsilon_{i,t},$$

where $\boldsymbol{X_i}$ is a vector of controls that may be correlated with suspect race. Controls are interacted with post-treatment indicators to absorb variation in treatment effects associated with those factors. The inclusion of these controls means that β_{BH} and β_{WA} no longer represent the average treatment effects of black/Hispanic and white/Asian killings, respectively. Instead, estimated treatment effects are obtained from a linear combination of β_{BH}, β_{WA} and $\boldsymbol{\gamma}$. Nonetheless, the difference between β_{BH} and β_{WA} is informative of the remaining variation in treatment effects attributable to suspect race and provides insight into the relevant counterfactual: all else equal, how would students have responded if the person killed was of a different race?

[Table III about here.]

Table III displays estimated treatment effects from estimation of Equation 2 under various specifications. Column 1 shows results from my base specification without any controls. Consistent with the subsample analysis, I find large and significant estimates for black/Hispanic killings and small, insignificant estimates for white/Asian killings. To account for the possibility that killings in more disadvantaged neighborhoods produce larger spillovers, Column 2 controls for population density, non-white population share, homicide rate and average income in a student's Census block group. Column 3 further accounts for informational differences that may exist between black/Hispanic and white/Asian killings. In particular, I control for whether the incident occurred near the suspect's home and for whether it was mentioned in a local newspaper, as students may be more affected by killings that involved

someone they personally knew or that were more visible.[33] Finally, I control for suspect age and gender in Column 4 to account for the fact that black/Hispanic suspects were younger on average. In each specification, treatment effects for black/Hispanic and white/Asian killings are estimated at the sample median of each of the respective neighborhood, incident and suspect factors.

Comparing across the four specifications, results mirror those found in Figure V with significant, negative treatment effects for black/Hispanic killings of around 0.030 points and insignificant, near-zero estimates for white/Asian killings that never rise above 0.008 points in magnitude. While I cannot reject the null that the two estimates are equal due to a lack of power, their relative magnitudes remain virtually constant across the four models. Thus, other observable contextual factors cannot explain the large disparities in how students respond to killings of whites/Asians and blacks/Hispanics.

Columns 5 through 8 of Table III replicate the analysis restricting the sample to black and Hispanic students. I again recover significant, negative estimates for killings of blacks and Hispanics and insignificant, near-zero estimates for killings of whites and Asians. This suggests that the differential effects by suspect race are not simply mirroring the heterogeneous effects by student race. That is, if (in the extreme case) students were only exposed to own-race killings, higher sensitivity to police violence among black and Hispanic students would mechanically lead to larger average effects for black and Hispanic killings. Instead, my findings suggest a more nuanced story about race-match: conditional on exposure, black and Hispanic students respond differently to police violence depending on the race of the person killed. The Appendix provides additional corroborating evidence by examining the relationship between student-suspect similarity and effect sizes.[34]

Taken together, the results highlight the salience of suspect race in community responses to police violence. Consistent with a host of survey and ethnographic research showing that a majority of Americans believe that police treat minorities less fairly than whites, I find suggestive evidence that police killings of blacks and Hispanics are more damaging than observably similar killings of whites and Asians (Bayley and Mendelsohn, 1969; Dawson

[33]Because I do not have information on a suspect's exact home address and am unable to link suspects to the anonymized schooling data (i.e., to identify former students), suspect residence was instead inferred from the DA incident reports and is a dummy variable set to one if the report mentioned that the shooting occurred in or directly outside the suspect's residence. Of the 556 incidents with contextual information, 119 were identified as occurring near the suspect's home.

[34]Specifically, Figure A.VI shows that treatment effects move monotonically with the demographic similarity of the person killed. For black and Hispanic students, exposure to police killings of individuals that looked like them (i.e., of the same gender, race and approximate age) leads to large decreases in GPA of nearly 0.10 points, while killings of dissimilar individuals have no negative impact on academic performance. For white and Asian students, however, I find no statistically significant effect in all cases and no clear pattern with respect to suspect similarity.

et al., 1998; Brooks, 1999; Pew Research Center, 2019).

B Suspect Threat

The incident reports highlight the wide range of circumstances surrounding police use of force, from killings of individuals who actively shot at others to killings of individuals who were completely unarmed. In order to un-bundle these contextual details and explore how responses may depend on the threat posed by the suspect, I estimate heterogeneous effects based on the type of weapon the suspect possessed.

Figure VI compares average treatment effects for police killings of unarmed individuals (17% of the sample) to those for incidents involving individuals armed with a gun (54%) or other weapon (29%). Results come from estimation of a modified version of Equation 2 with separate post-treatment by weapon interactions. The sample is restricted to the 556 incidents for which I was able to obtain contextual details.

[Figure VI about here]

I find significant, negative effects for each type of killing. However, the point estimate for police killings of unarmed individuals (-0.047 points) is roughly twice as large as that for killings of individuals armed with a knife (-0.020) or a gun (-0.024). Differences between the first and last two estimates are statistically significant at the 5 percent level ($p = 0.047$ for unarmed vs. knife killings; $p = 0.050$ for unarmed vs. gun killings). As shown in Column 2 of Table IV, these differences are also largely unattenuated when accounting for differential treatment effects by neighborhood characteristics, media coverage, and suspect demographics and residence. This suggests that other informational and situational factors cannot explain the large disparity in responses to armed and unarmed killings.

To further investigate the salience of suspect threat, I disaggregate killings of gun-wielding suspects by whether the individual fired his weapon. As shown in Columns 3 and 4 of Table IV, the effects for killings of gun-wielding suspects are primarily driven by incidents involving individuals who did *not* fire at others (-0.028 points). Despite comprising a similar share of the sample, treatment estimates for killings of individuals who shot at officers or civilians are 40% smaller and statistically insignificant.

[Table IV about here]

Columns 5 through 8 of Table IV and Panel B of Figure VI replicates the analysis, restricting the sample to incidents involving black and Hispanic fatalities. I again find significantly larger effects for police killings of unarmed individuals (-0.053 points) than for

killings of individuals armed with guns (-0.020 points). However, across specification, the weapon gradient becomes steeper when restricting to killings of blacks and Hispanics. The difference between treatment estimates for unarmed and gun-armed killings is roughly 50% larger than in the full sample and significant at the 5 percent level in nearly all cases. This is consistent with the fact that blacks and Hispanics suspects were less likely to be unarmed than those of other race groups as well as earlier evidence showing that police killings of whites/Asians have smaller effects than observably similar killings of blacks/Hispanics.

Taken together, the results suggest that the effects of police violence are unlikely to be driven by those incidents with the most gunfire or the deadliest shootouts. If they were, one would expect the largest spillovers to come from killings of suspects who had shot at others. In fact, those events have no statistically significant impact on nearby students. Instead, I find that the most damaging events are police killings of unarmed individuals, those who may have been the least likely to pose a threat to the community or to be engaged in a violent crime at the time of the incident.

In this light, the findings suggest that students may be responding to the perceived reasonableness or legitimacy of officer actions as much as to the use of force itself. Given that virtually all sample killings were legally justified, it is important to note that the differential effects by weapon type are not reflective of differences in the actual legality of police behavior. However, as reflected by nationwide protests over the police killings of Michael Brown and George Floyd, community perceptions of "reasonableness" often depend on contextual factors similar to those assessed here, with police violence against unarmed minorities drawing particular concern (Hall et al., 2016).

C Comparing Police and Criminal Violence

The previous results suggest that a simple model of violent exposure cannot fully explain the observed effects of police killings on student achievement. However, to further investigate, I directly compare the impacts of police violence to those of other gun-related homicides.

Given the frequency of the latter, I employ a modified event study model to compare the short-run effects of police and criminal gun-related killings.[35] Specifically, I estimate:

$$(3) \qquad y_{i,t} = \delta_i + \lambda_{n,t} + \omega_{c,t} + \sum_{\tau=-3}^{3} \beta_\tau Police_\tau + \sum_{\tau=-3}^{3} \gamma_\tau NonPolice_\tau + \boldsymbol{X_{b,t}\gamma} + \epsilon_{i,t},$$

[35] From 2002 to 2016, the County experienced over 9,000 gun-related homicides. Among the sample's four-year high school students, 80% were exposed to at least one gun-related homicide, with students experiencing an average of 4.5 such incidents during their high school careers.

where $Police_\tau$ and $NonPolice_\tau$ are the number of police and non-police killings that a student was exposed to in semester $t - \tau$. Because exposure to violent crime may be correlated with incidence of other crimes or policing activity, I also include time-varying controls for arrests and reported crimes at the Census block-level, $\boldsymbol{X}_{b,t}$.[36] This model is similar to my main difference-in-differences approach in that it exploits temporal and spatial variation in exposure to violence, accounting for level differences between students and time-varying differences across neighborhoods.

[Figure VII about here]

Results are displayed in Figure VII. I find significant negative effects of violence on student achievement. Exposure to a single criminal homicide leads to decreases in GPA lasting three semesters. This is consistent with a host of recent studies showing that exposure to violent crime is associated with reduced academic performance (Burdick-Will et al., 2011; Burdick-Will, 2013; Sharkey et al., 2014; Gershenson and Tekin, 2017).[37]

However, at its peak, the effect of criminal homicides is only 60% as large as that for police killings. These estimates are statistically distinct from each other at the 5 percent-level for $0 \leq \tau \leq 2$.[38] As shown in Table A.IV, I also find similar relative magnitudes for police and non-police killings when examining daily absenteeism, where the temporal granularity of the data helps to precisely identify the very short-run effects of each event. Combined, the results suggest that the marginal impacts of police killings on education are nearly twice as large as those of criminal homicides.

This does not mean police killings are more damaging than criminal homicides, in aggregate. Given the relative frequency of criminal homicides, the opposite is likely true. It is also possible that the marginal effects for police killings are larger precisely because there are fewer of them, and that prior exposure has inured students to criminal homicides. However, the fact that the marginal effects differ suggests that students may view police killings and criminal homicides as unique phenomena and that different mechanisms might drive their responses to each.

[Table V about here]

To explore this, Table V estimates heterogeneous effects of criminal homicides by race. Columns 1 and 2 first replicate my event study findings using a simplified model examining

[36] As these data are only available from 2010 onwards, the sample is restricted to that period. Results are similar when excluding the crime controls and including the entire sample period.

[37] While Burdick-Will (2013) finds that violence has little effect on grades, that study and others (Burdick-Will et al., 2011; Sharkey et al., 2014; Gershenson and Tekin, 2017) note a strong negative relationship with student test scores.

[38] That is, comparing $\beta_\tau = \gamma_\tau$ yields $p = 0.032$ at $\tau = 0$, $p = 0.040$ at $\tau = 1$ and $p = 0.007$ at $\tau = 2$.

exposure in the current and prior semester. As before, I find that police killings have a significantly larger impact on GPA (-0.031 points) than criminal homicides (-0.018 points). This difference remains even when including controls for local crimes and arrests.

In Columns 3 and 4, I separate police and criminal killings based on the race of the person killed. Consistent with the racially-disparate effects demonstrated earlier, police killings of blacks and Hispanics have large, negative impacts on student achievement (-0.034 points), while police killings of whites and Asians have no economically or statistically significant effect (-0.004). In contrast, criminal homicides of whites/Asians and blacks/Hispanics are associated with nearly identical decreases in grade point average (-0.016 and -0.018 points, respectively). Columns 5 through 8 demonstrate similar results when restricting the sample to black and Hispanic students. Again, I find larger average impacts for police killings than non-police killings and distinct racial patterns within each type of event. While students are only affected by police killings if they involve black or Hispanic fatalities, they are equally affected by criminal homicides regardless of the race of the person killed.

These findings provide further evidence that student responses to officer-involved killings are not merely a function how much gunfire was present or the fact that someone died. Put differently, police killings do not appear to be simply a more extreme form of violence than criminal homicides.[39] Rather, there exist meaningful qualitative differences in how students respond to these types of events.

VI Long-Run Impacts

A Identification

The estimated effects on academic achievement and mental health suggest that exposure to police killings may have significant long-run ramifications. However, I am unable to estimate Equation 1 when examining educational attainment, as individual fixed effects would fully absorb variation in outcomes, which are measured once per student at the end of their high school careers. Instead, I exploit variation in exposure to police violence between different cohorts of students from the same neighborhood. That is, I compare older students who had already left high school at the time of a killing to younger students who were still in school.

[39] As further evidence, Table A.V finds that police killings generate larger effects even relative to gang-related homicides, which are more likely to occur in public areas, to involve multiple participants, and to result in bystander fatalities than other criminal homicides (Maxson et al., 1985). Whether a non-police killing was gang-related was determined from incident descriptions from the homicide database. Specifically, if the description contained the words "gang-related" or if either the suspects or the victims were described as having a gang affiliation or suspected gang affiliation, the incident was marked as gang-related.

To understand the relevant sample of observations, first consider a single police killing. Using cross-sectional data, the first difference in a DD model would compare graduation rates of students in expected grades ≤ 12 living nearby (within 0.50 miles) to graduation rates of nearby students in expected grades > 12, where expected grade is determined by the year a student began 9th grade. To account for trends in graduation rates over time, the second difference would capture the between-cohort change in attainment among students who lived farther away from the killing (i.e. between 0.50 and 3 miles).

Extending this logic to multiple killings, I identify the sample of students in expected grades 9 through 16 around each incident and pool these samples together. For students who experienced multiple killings, the same student would appear at each respective grade in the pooled data. However, duplicates are removed such that a given student may only appear once per expected grade. Thus, observations in the final dataset are uniquely identified by student, i, and expected grade, g, with treatment status for observation (i, g) determined by the student's distance to the nearest killing in that expected grade.[40] As an example, consider a student who entered the 9th grade in fall 2007 and experienced a killing 0.20 miles away in fall 2009, a killing 1.5 miles away in fall 2011, and two killings in fall 2013, one 0.20 miles away and one 1.5 miles away. The student would appear three times in the final dataset: at expected grades 11 and 15 as treatment, and at grade 13 as control.[41]

The benefit of this construction is that it enables me to explicitly test for parallel "pre-trends" in the cross-sectional data without otherwise having to condition the sample. This is done by estimating the following event study model on the pooled data:

$$y_{i,g} = \delta_{n,c} + \sum_{\tau \neq 13} \beta_\tau Shoot_{i,g} \times Grade_\tau + \lambda Shoot_{i,g} + \boldsymbol{X_i}\boldsymbol{\gamma} + \epsilon_{i,g}. \tag{4}$$

Here, $y_{i,g}$ corresponds to the long-run educational attainment of student i of expected grade g. $\delta_{n,c}$ are neighborhood-cohort fixed effects accounting for a changes over time between cohorts in a block group. Because I cannot include individual fixed effects, I instead control for a vector of demographic covariates, $\boldsymbol{X_i}$, including a student's school, race, sex, poverty status, household language, parental education and 8th grade proficiency. To account for level differences in attainment between treatment and control observations, $Shoot_{i,g}$ is an

[40] In robustness analysis, I restrict the treatment sample to students who were only treated once. Alternatively, I expand the sample to allow students to appear as both treatment and control in the same expected grade. I find similar results in all cases.

[41] This is similar to the framework employed by Cellini et al. (2010), who employ a regression discontinuity design around school bond referenda. Because school districts may have multiple elections in close succession, a single district-time observation is duplicated and appears in both the post-treatment period of one election and the pre-treatment period of a different election.

indicator set to 1 if observation (i, g) is in the treatment group. The coefficients of interest (β_τ) are on the interaction between the treatment indicator and a set of expected grade indicators $Grade_\tau$. As with a standard DD model, they represent the average difference in attainment between students exposed in expected grade g and students exposed in the omitted period (expected grade 13), relative to that same difference among control students. Standard errors are clustered by student to account for dependence arising from the use of multiple i observations in the sample. Results are robust to two-way clustering with cohort and to clustering at the area-level.

B Educational Attainment

To validate the long-run empirical strategy against the student fixed effects model, I first estimate Equation 4 on final cumulative GPA. The sample is restricted to entering 9th graders with expected graduation dates from spring 2006 to spring 2016 (i.e., those students whose expected 9th to 12th grade years fall entirely within the sample period.) Results are displayed in Panel A of Figure VIII. In reading the figure, note that higher expected grades correspond to older cohorts, whose final GPA was already determined at the time of the killing. Treatment coefficients for these cohorts are near zero and jointly insignificant $(F = 0.72, p = 0.541)$, supporting parallel trends in achievement between older cohorts of students in treatment and control areas.

[Figure VIII about here.]

However, among students in lower expected grades, I find significant differences in long-run achievement associated with exposure to police violence. Notably, the average treatment estimate on cumulative GPA (0.029 points) is nearly identical to the average estimate on semester GPA (0.027 points) from the student fixed effects model in Table II. Though comparing across the two models is not a straightforward exercise, these findings nonetheless provide important validation of the long-run identification strategy, which produces estimates broadly consistent in direction and magnitude with the earlier analysis.

Turning to my primary attainment outcomes, Panel B presents results for high school completion, an indicator set to 1 if the student received a diploma or equivalent from the District. In support of parallel trends, treatment estimates for expected grades > 12 are all insignificant at the 5 percent level. However, students exposed in lower expected grades are significantly less likely to complete high school. Exposure in the 9th grade predicts a 1.7 percentage point decrease in graduation rate. Estimates are similar in magnitude among students exposed in the 10th grade (1.8 p.p.), but decline by roughly half for those in the

11th grade (1.0 p.p.) and approach zero for those exposed in the 12th grade (0.3 p.p.). As mentioned in Section IV, these estimates are in range of those expected from the semester GPA analysis, which predict a roughly 1.5 p.p. decrease in graduation rate.

Panel C examines effects on college enrollment. Similar to Billings et al. (2013), college enrollment is defined as whether a student attended college within the calendar year after their expected high school graduation. The sample is restricted to students in the 2009 to 2014 cohorts (i.e., those for whom NSC data is available). As shown, I find effects qualitatively similar to those for high school completion. Exposure to police violence is associated with significant decreases in college enrollment among 9th and 10th graders of 0.09 percentage points. Estimates then converge to zero for students in higher expected grades.

That effects decrease with expected grade is consistent with work in psychology suggesting that student resilience to neighborhood violence increases with age (Luthar, 1991; Hacker et al., 2006). These dynamics can also be explained more mechanically. As expected grade increases, the share of possible compliers decreases, both because the subset of individuals that remain enrolled shrinks and because the remaining individuals are likely less marginal than earlier dropouts. Nonetheless, the results point to the significant economic impact that police killings can have on younger high school students. The 9th grade treatment estimates correspond to a 3.4% decrease in graduation rate (mean of 50%) and a 2.7% decrease in post-secondary enrollment rate (mean of 32.6%).

[Figure IX about here.]

Figure IX unpacks these effects by student race. For each student race subsample, I estimate a simplified version of Equation 4 replacing the full set of expected grade by treatment interactions with a single post-treatment dummy (i.e., set to 1 for treatment observations in expected grade ≤ 12). Similar to the heterogeneous effects on semester GPA, a stark racial pattern emerges. Across the three outcomes, I find significant, negative effects of police violence on the educational attainment of black and Hispanic students. However, white and Asian students are unaffected by exposure to police killings, with insignificant, near zero estimates in all cases.

Taken together, the results indicate that police killings may have large long-run effects on local communities. This provides causal evidence supporting the link between adverse childhood experiences and educational attainment found in the literature (Harris, 1983; Broberg et al., 2005; Porche et al., 2011).[42] However, police violence differs from many other

[42]For example, Porche et al. (2011) find that individuals who reported being in a car crash or natural disaster before age 16 were 50% more likely to have dropped out of high school.

forms of trauma in one important dimension. The costs of officer-involved killings are borne entirely by black and Hispanic youth and may serve to exacerbate existing racial disparities in human capital accumulation.

Robustness

Table VI presents a series of robustness checks on the long-run analysis. Column 1 displays my base specification using a single post-treatment dummy. Columns 2 and 3 test alternative bandwidths, restricting the treatment group to students within 0.25 miles and the control group to students between 0.50 and 2 miles, respectively. Columns 4 and 5 replace the cohort by Census block group fixed effects with cohort by Census tract and cohort by square-mile grid units, respectively. Column 6 expands the sample to allow students to appear as both treatment and control in a given expected grade (i.e., if the student lived within 0.50 miles of a killing and between 0.50 and 3 miles of a different killing in that grade). Column 7 instead restricts the sample by excluding students who were treated more than once from expected grades 9 through 16.

[Table VI about here.]

Across specifications and outcomes, I find significant decreases in attainment associated with exposure to police violence. Magnitudes increase modestly when excluding multiple-treaters and when narrowing the treatment bandwidth, consistent with larger effects for closer students. Otherwise, estimates are relatively stable across model, with exposure in expected grades ≤ 12 associated with average decreases in cumulative GPA of roughly 0.03 points, in graduation rate of 1 percentage point and in college enrollment of around 0.6 percentage points.

Appendix Table A.VI demonstrates robustness to alternative calculations of standard errors (i.e., multi-way clustering by student and cohort and clustering by zip code or Census tract). In all cases, treatment coefficients for expected grades ≥ 12 are insignificant, while those for expected grades < 12 are highly significant. The Appendix also provides evidence that the long-run effects are not driven by differential attrition (i.e., students transferring out of the District).[43] In particular, Figure A.VII decomposes the effect on high school graduation by estimating Equation 4 on an indicator for whether a student transferred out of the District and, separately, on an indicator for whether a student dropped out altogether (i.e., did not graduate and did not transfer). The effects on high school completion come

[43]The reason this may be concern is that I do not observe whether students who transferred out of the District went on to graduate from other school districts.

almost entirely from drop-outs. Treatment estimates for the two are near mirror images. I find no significant effect of exposure to police killings on transfers.[44]

VII Conclusion

This study provides causal evidence of the deleterious effects of police violence on the academic and psychological well-being of black and Hispanic high school students. The findings suggest that police violence may have important ramifications for racial equity in education. Extrapolating from my estimates suggests that officer-involved killings caused nearly 2,000 black and Hispanic students to drop out of school during the sample period. This does not include any impacts on younger children nor does it consider other costs associated with lost schooling, such as increased crime (Lochner and Moretti, 2004).

These findings point to the particular salience of law enforcement in minority communities. Officer-involved killings are tail events and rarely appear in the media. That they exert lasting effects on schoolchildren points to the potential impact that police may have on the long-term health of neighborhoods, more generally. As the first line of defense and one of the most visible arms of government, law enforcement agencies are a vital part of local communities and may play a critical role in promoting public safety and fostering institutional trust. Better understanding these effects may have important ramifications not only for the design of optimal law enforcement policies, but also for the long-run outcomes of marginalized populations.

[44]Treatment estimates on graduation in expected grades 9 and 10 are -0.017 and -0.018 points, respectively. Estimates for drop-outs are 0.016 and 0.016 points, while those for transfers are 0.001 and 0.002 points.

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Table I: Summary Statistics

Panel A: Police Killings				*Panel B: Students*				
		Black/	White/				>.5mi.	
	All	Hispanic	Asian		All	≤.5 mi.	Area	Non-Area
Suspect Demographics				*Student Demographics*				
Black	0.26	0.33	0.00	Black	0.12	0.11	0.12	0.12
Hispanic	0.52	0.67	0.00	Hispanic	0.74	0.82	0.80	0.70
White	0.19	0.00	0.83	White	0.08	0.03	0.03	0.10
Asian	0.03	0.00	0.14	Asian	0.06	0.04	0.04	0.08
Male	0.97	0.97	0.96	Male	0.50	0.50	0.49	0.50
Age	32.3	30.6	38.0	Proficient (8th)	0.43	0.40	0.35	0.46
Newspaper Mentions				*Household Characteristics*				
Any	0.22	0.22	0.21	Free lunch	0.69	0.77	0.72	0.66
Total	1.48	1.66	0.88	English lang.	0.29	0.23	0.25	0.32
Median (if any)	2.00	2.00	2.00	College+	0.08	0.06	0.05	0.09
Suspect Weapon								
Unarmed	0.17	0.17	0.20					
Knife	0.29	0.25	0.44					
Gun	0.54	0.58	0.36					
Fired (if gun)	0.41	0.42	0.33					
Incidents	627	486	141	Students	712,954	141,628	133,758	437,568

Notes: Panel A provides summary statistics for the police killings data, separately for killings of minorities (blacks and Hispanics) and killings of individuals of other races (whites and Asians). Unless otherwise noted, mean values reported. Newspaper mentions come from a search of each incident by suspect name in six local newspapers including one nationally-distributed paper. Any is an indicator for whether the incident was mentioned in any article, Total is the number of articles mentioning the incident. Median is the median number of articles in each race category, conditional on being mentioned. Suspect weapon is only available for incidents for which I was able to obtain contextual information from District Attorney reports and other sources (556 out of 627 incidents). Unarmed refers to suspects that did not have a weapon, gun refers to suspects with firearms (including BB guns and replicas), knife refers to suspects with any other type of weapon. Fired is the share of gun-wielding suspects that discharged their weapon.
Panel B provides summary statistics for the student sample, disaggregated by those who lived near/far from a killing during their District tenure. Students whose home address was more than 0.50 miles from a killing are further grouped based on whether they lived in a Census block group where at least one other student in their cohort lived within 0.50 miles of a killing ("Area") or in a Census block group where no other students in their cohort lived within 0.50 miles of a killing ("Non-Area"). Proficient is an indicator for whether the student's average 8th grade state standardized test scores were at a "basic" or higher level of proficiency. Free lunch is an indicator for free/subsidized lunch qualification, English language is an indicator for students from English speaking households, College+ is an indicator for whether a student's parent has a college degree or higher.

Table II: Effects on GPA and Emotional Disturbance

	Base	Alt. Controls		Alt. Neighborhood		Alt. Sample	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Panel A: DV = Grade Point Average						
Treat x Post	-0.027***	-0.027***	-0.029***	-0.019***	-0.029***	-0.021***	-0.029***
	(0.006)	(0.006)	(0.010)	(0.005)	(0.007)	(0.006)	(0.007)
Obs.	4,166,188	4,166,188	1,815,131	4,173,300	4,157,829	4,005,642	3,778,162
	Panel B: DV = Emotional Disturbance (per 1,000 students)						
Treat x Post	0.470***	0.470***	0.637***	0.382***	0.428***	0.481***	0.469***
	(0.127)	(0.127)	(0.216)	(0.115)	(0.125)	(0.148)	(0.124)
Obs.	4,029,073	4,029,073	1,876,183	4,029,436	4,028,739	3,867,867	3,768,180
Neighborhood	Blk grp	Blk grp	Blk grp	Tract	Grid	Blk grp	Blk grp
Homicides	-	Y	Y	Y	Y	Y	Y
Crime, Arrests	-	-	Y	-	-	-	-
Exclude	-	-	< 2010	-	-	Multi-treaters	New 10-12 graders

Notes: Table shows DD coefficients and 95 percent confidence intervals from estimation of Equation 1, replacing time to treatment indicators with a post-treatment dummy. Panel A examines non-cumulative, semester GPA. Panel B examines emotional disturbance per 1,000 students. Information on emotional disturbance is only available from the 2003-2004 school year onwards. Column 1 presents my base specification. Column 2 introduces controls for criminal homicides in a block-semester. Column 3 adds controls for the number of crimes and arrests in a block-semester (this information is only available from 2010 onwards). Column 4 controls for neighborhood-semester effects at the Census Tract-level, as opposed to Census block group-level (there are roughly 2.6 block groups per tract). Column 5 instead controls for neighborhood using arbitrary square mile units derived from dividing the County into a grid. Column 6 excludes treatment students that were exposed to multiple police killings. Column 7 excludes students that entered the District in the 10th to 12th grades.

Table III: Effects on GPA by Suspect Race

	All Students				*Black/Hispanic Students*			
Avg. Treatment Effect	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Black/Hispanic Killing	-0.028***	-0.031***	-0.030***	-0.030***	-0.031***	-0.034***	-0.033***	-0.033***
	(0.007)	(0.007)	(0.006)	(0.006)	(0.008)	(0.007)	(0.007)	(0.007)
White/Asian Killing	-0.005	-0.008	-0.007	-0.007	-0.005	-0.011	-0.010	-0.010
	(0.012)	(0.013)	(0.013)	(0.013)	(0.014)	(0.014)	(0.015)	(0.015)
$\beta_{BH} - \beta_{WA}$	-0.023	-0.023	-0.023	-0.023	-0.026	-0.023	-0.023	-0.023
$p(\beta_{BH} = \beta_{WA})$	0.132	0.131	0.131	0.134	0.142	0.184	0.184	0.179
Area Characteristics	-	Y	Y	Y	-	Y	Y	Y
Media, Residence	-	-	Y	Y	-	-	Y	Y
Suspect Demo.	-	-	-	Y	-	-	-	Y
Observations	4,166,168	4,166,168	4,166,168	4,166,168	3,590,169	3,590,169	3,590,169	3,590,169
R-squared	0.695	0.695	0.695	0.695	0.677	0.677	0.677	0.677

Notes: Average treatment effects for minority and white killings from estimation of Equation 2 displayed. Treatment effects computed at sample median of each area, incident and suspect factor. Area characteristics include population density, average income, homicide rate and percent non-white in a student's block group. Media coverage is an indicator for whether the incident was reported in local newspapers (median = 0). Residence is an indicator for whether the incident occurred in or directly outside of the suspect's home (median = 0). Suspect demographics include age (median = 33) and gender (median = male). Left panel examines all students, right panel restricts analysis to black and Hispanic students.

Table IV: Effects on GPA by Suspect Threat

	All Killings				*Black/Hispanic Killings*			
Avg. Treatment Effect	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Unarmed	-0.047***	-0.043***	-0.047***	-0.043***	-0.053***	-0.054***	-0.053***	-0.054***
	(0.011)	(0.011)	(0.011)	(0.011)	(0.014)	(0.014)	(0.014)	(0.014)
Knife	-0.020**	-0.022**	-0.020**	-0.021*	-0.030***	-0.033***	-0.030***	-0.032***
	(0.009)	(0.011)	(0.009)	(0.011)	(0.010)	(0.012)	(0.010)	(0.012)
Gun	-0.024***	-0.023***	-	-	-0.020**	-0.023***	-	-
	(0.007)	(0.006)	-	-	(0.009)	(0.008)	-	-
Gun, not fired			-0.028***	-0.027***			-0.023**	-0.026***
			(0.009)	(0.008)			(0.011)	(0.010)
Gun, fired			-0.017	-0.017			-0.016	-0.018
			(0.012)	(0.012)			(0.013)	(0.013)
$\beta_{none} - \beta_{gun/fired}$	-0.023	-0.020	-0.030	-0.026	-0.033	-0.031	-0.037	-0.036
$p(\beta_{none} = \beta_{gun/fired})$	0.050	0.098	0.056	0.114	0.023	0.025	0.045	0.052
Area/Media/Suspect Ctrls	-	Y	-	Y	-	Y	-	Y
Observations	4,068,357	4,068,357	4,068,357	4,068,357	3,963,677	3,963,677	3,963,677	3,963,677
R-squared	0.694	0.694	0.694	0.694	0.692	0.692	0.692	0.692

Notes: Average treatment effects for killings of unarmed suspects (18%), suspects armed with a weapon other than a gun (29%), and suspects armed with a gun (53%) from estimation of Equation 2 with separate post-treatment by weapon type interactions displayed. Fired/not fired refers to gun-wielding suspects who did/did not shoot at officers or civilians. Treatment effects computed at sample median of each neighborhood, incident and suspect characteristic. Neighborhood characteristics include population density, average income, homicide rate and percent non-white in a student's block group. Media coverage is an indicator for whether the incident was reported in local newspapers (median = 0). Residence is an indicator for whether the incident occurred in or directly outside of the suspect's home (median = 0). Suspect demographics include age (median = 33) and gender (median = male). Left panel includes all killings with contextual information, right panel restricts to killings of blacks and Hispanics.

Table V: Comparing GPA Effects of Police and Criminal Violence

	All Students				*Black/Hispanic Students*			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Police Killings								
Any	-0.031***	-0.029***	-	-	-0.033***	-0.031***	-	-
	(0.006)	(0.006)	-	-	(0.006)	(0.006)	-	-
Black/Hispanic			-0.034***	-0.032***			-0.037***	-0.035***
			(0.006)	(0.006)			(0.006)	(0.006)
White/Asian			-0.005	-0.004			0.000	0.002
			(0.015)	(0.015)			(0.016)	(0.016)
Non-Police Killings								
Any	-0.018***	-0.016***	-	-	-0.018***	-0.016***	-	-
	(0.002)	(0.002)	-	-	(0.002)	(0.002)	-	-
Black/Hispanic			-0.018***	-0.016***			-0.018***	-0.016***
			(0.002)	(0.002)			(0.002)	(0.002)
White/Asian			-0.016***	-0.013**			-0.016**	-0.013**
			(0.006)	(0.006)			(0.006)	(0.006)
$p(\beta_P = \beta_N)$	0.030	0.027	-	-	0.012	0.010	-	-
$p(\beta_{P,BH} = \beta_{P,WA})$			0.082	0.088			0.036	0.038
$p(\beta_{N,BH} = \beta_{N,WA})$			0.727	0.631			0.788	0.669
Crime, Arrests	-	Y	-	Y	-	Y	-	Y
Obs.	1,922,635	1,922,635	1,922,635	1,922,635	1,653,541	1,653,541	1,653,541	1,653,541
R-sq.	0.712	0.712	0.712	0.712	0.696	0.696	0.696	0.696

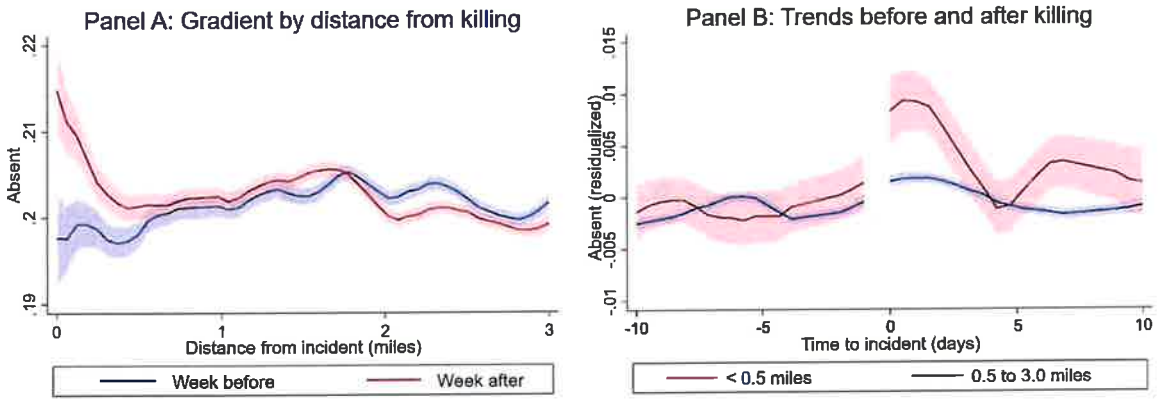
Notes: Coefficients from estimation of modified version of Equation 3 on semester grade point average, replacing the full set of leads and lags with the number of police and non-police killings of each type that occurred within 0.50 miles of a student's home in the current and previous semester. Crime controls include the number of reported crimes and arrests that occurred in the student's Census block in the current and previous semester. Standard errors clustered by zip code. Left panel examines all students, right panel restricts analysis to black and Hispanic students.

Table VI: Effects on Educational Attainment

	Base	Alt. Bandwidth		Alt. Neighborhood		Alt. Sample	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
				Panel A: DV = Cumulative GPA			
Treat x Grade≤12	-0.028***	-0.034***	-0.022***	-0.028***	-0.029***	-0.030***	-0.034***
	(0.002)	(0.004)	(0.002)	(0.002)	(0.002)	(0.001)	(0.002)
Obs.	3,052,158	3,009,826	2,256,623	3,052,310	3,051,204	3,284,564	2,666,509
				Panel B: DV = Graduated HS			
Treat x Grade≤12	-0.011***	-0.014***	-0.009***	-0.010***	-0.012***	-0.012***	-0.014***
	(0.001)	(0.002)	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
Obs.	3,219,062	3,175,495	2,381,580	3,219,206	3,218,091	3,466,890	2,805,025
				Panel C: DV = College Enrollment			
Treat x Grade≤12	-0.006***	-0.010***	-0.005***	-0.006***	-0.006***	-0.006***	-0.007***
	(0.001)	(0.002)	(0.001)	(0.001)	(0.001)	(0.001)	(0.001)
Obs.	1,826,985	1,801,498	1,354,303	1,827,044	1,826,484	1,963,684	1,588,165
Neighborhood	Blk grp	Blk grp	Blk grp	Tract	Grid	Blk grp	Blk grp
Treatment	< .50 mi	< .25 mi	< .50 mi	< .50 mi	< .50 mi	< .50 mi	< .50 mi
Control	.50-3 mi	.50-3 mi	.50-2 mi	.50-3 mi	.50-3 mi	.50-3 mi	.50-3 mi
Sample	-	-	-	-	-	Allow std-grade duplicates	Exclude multi-treaters

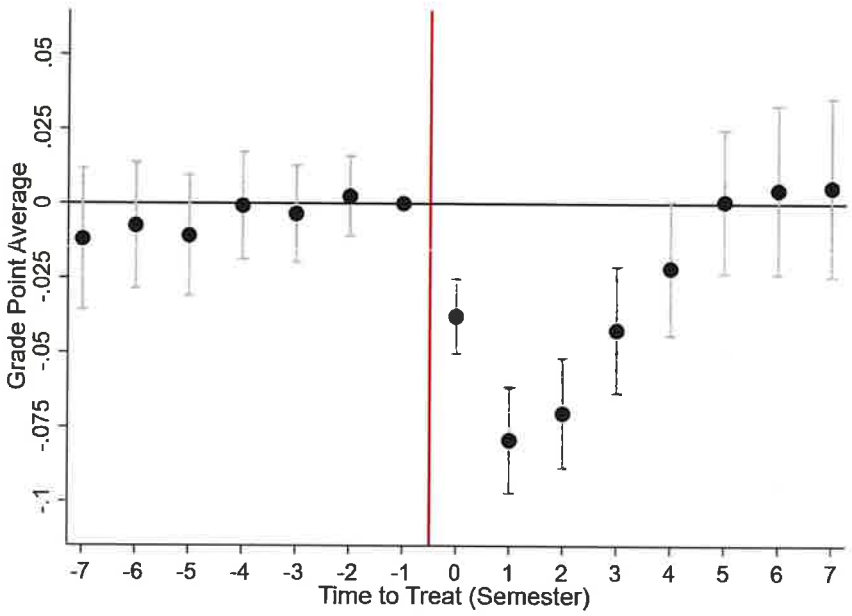
Notes: Coefficients and standard errors from estimation of modified version of Equation 4, replacing the full set of expected grade at treatment interactions with a simple post-treatment dummy set to 1 for treated observations in expected grade ≤ 12. Standard errors clustered by student. Cumulative GPA is a student's final cumulative GPA upon exiting the District. Graduated is an indicator set to 1 if a student received a diploma, GED or special education certificate of completion from the District. College enrollment is an indicator for whether a student enrolled in college within the calendar year after their expected high school graduation date. Transcript data is missing for roughly 5% of students in the school registration data. Results are robust to dropping these students from the graduation and college enrollment analysis. College enrollment data is only available for students in the 2009 to 2014 cohorts. Column 1 presents my base specification. Column 2 restricts the treatment group to students living within 0.25 miles of killing in an expected grade. Column 3 restricts the control group to students living between 0.50 and 2 miles from a killing. Column 4 controls for neighborhood-cohort effects at the Census Tract-level, as opposed to Census block group-level. Column 5 instead controls for neighborhood-cohort using arbitrary square mile units derived from dividing the County into a grid. Column 6 allows (i, g) duplicates if a student was in the treatment group for one killing and the control group for another killing in the same expected grade. Column 7 excludes treatment students who were exposed to multiple killings from expected grades 9 through 16.

Figure I: Effects on Absenteeism



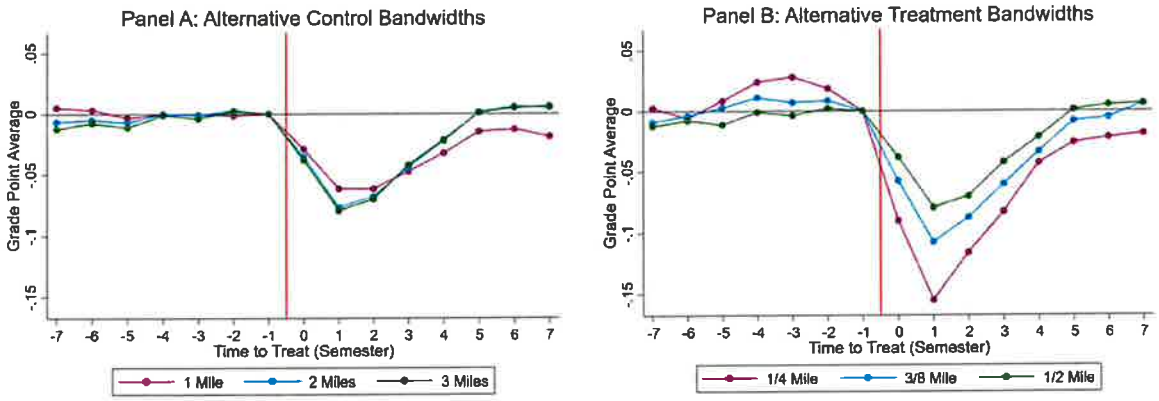
Notes: Panel A depicts local polynomial regressions of daily absenteeism on distance from police killings (bandwidth = 0.075 miles), separately for the week before and the week after (inclusive of the incident date). Panel B depicts local polynomial regressions of daily absenteeism (residualized by calendar date) on days before/after police killings (bandwidth = 1 day), separately for students who lived within 0.5 miles and students who lived between 0.5 and 3 miles of these events. The estimation samples consist of the pooled set of observations within each event window, where distance and relative time are re-defined within each window. Analysis is restricted to killings from the 2009-2010 school year onward, the period for which daily attendance data is available. Per Fan and Gijbels (1996), standard errors are calculated using pilot bandwidths equal to 1.5 times the kernel bandwidths. Shaded areas represent 95% confidence intervals. Absent is a binary indicator for whether a student missed any class on a given day.

Figure II: Effects on GPA



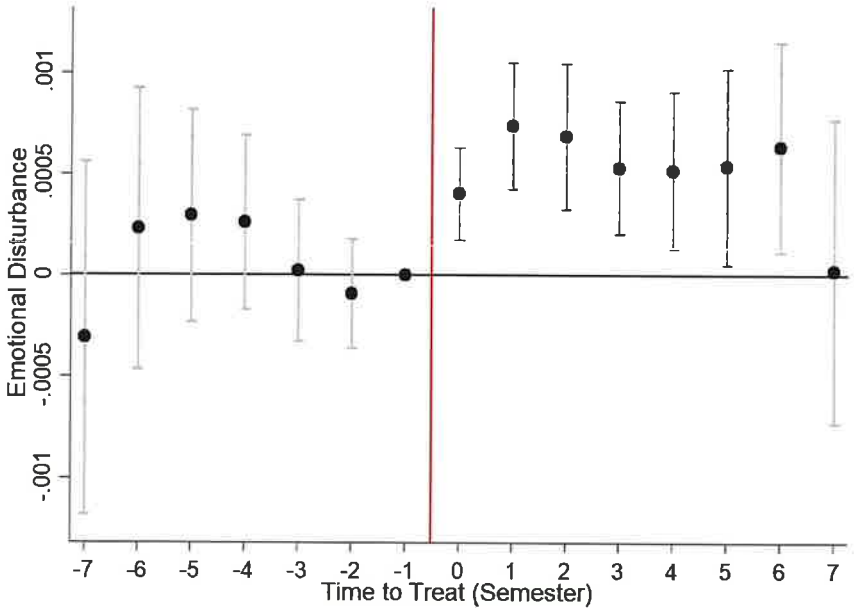
Notes: Graph shows DD coefficients and 95 percent confidence intervals from estimation of Equation 1 on semester grade point average. Standard errors clustered by zip code. Treatment defined as students living within 0.50 miles of an incident. Red vertical line represents time of treatment.

Figure III: Effects on GPA: Alternative Specifications



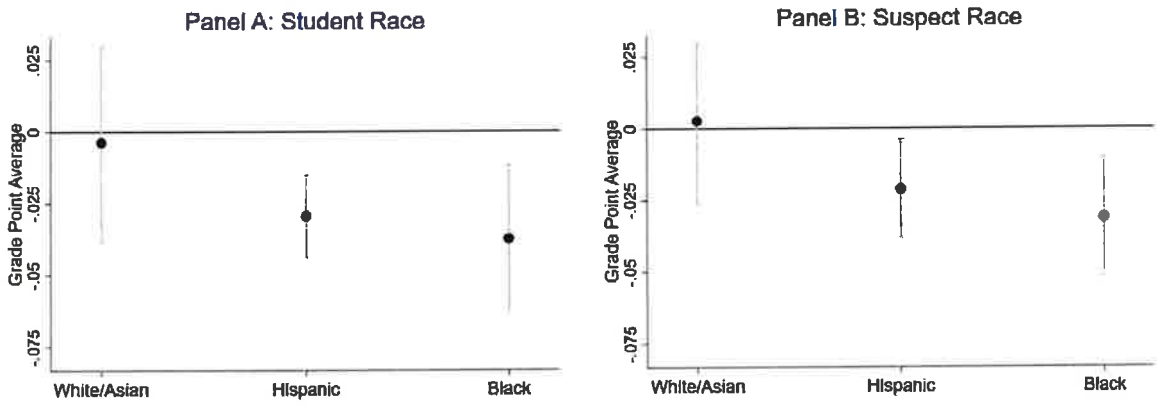
Notes: Graphs show DD coefficients from estimation of Equation 1 on semester grade point average under alternative treatment and control bandwidths. Standard errors clustered by zip code. In Panel A, the control group varies to include students living between 0.50 miles and 1 mile away, between 0.50 miles and 2 miles away and between 0.50 miles and 3 miles away of a killing. In all cases, the treatment group includes students living within 0.50 miles of a killing. In Panel B, the treatment group varies to include students living within 0.25 miles, within 0.375 miles and within 0.50 miles of a killing. In all cases, the control group includes students living between 0.50 and 3 miles of a killing.

Figure IV: Effects on Emotional Disturbance



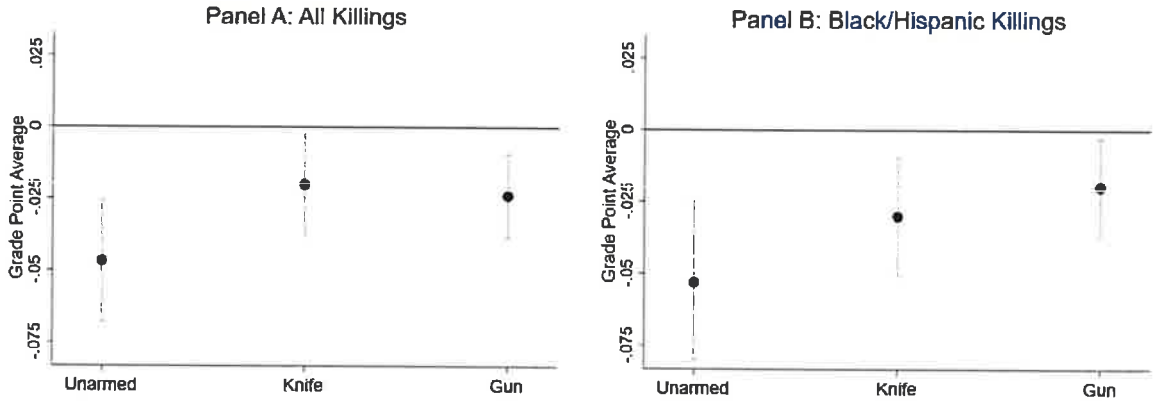
Notes: Graph shows DD coefficients and 95 percent confidence intervals from estimation of Equation 1 on an indicator for emotional disturbance. Standard errors clustered by zip code. Treatment defined as students living within 0.50 miles of an incident. Red vertical line represents time of treatment.

Figure V: Effects on GPA by Race



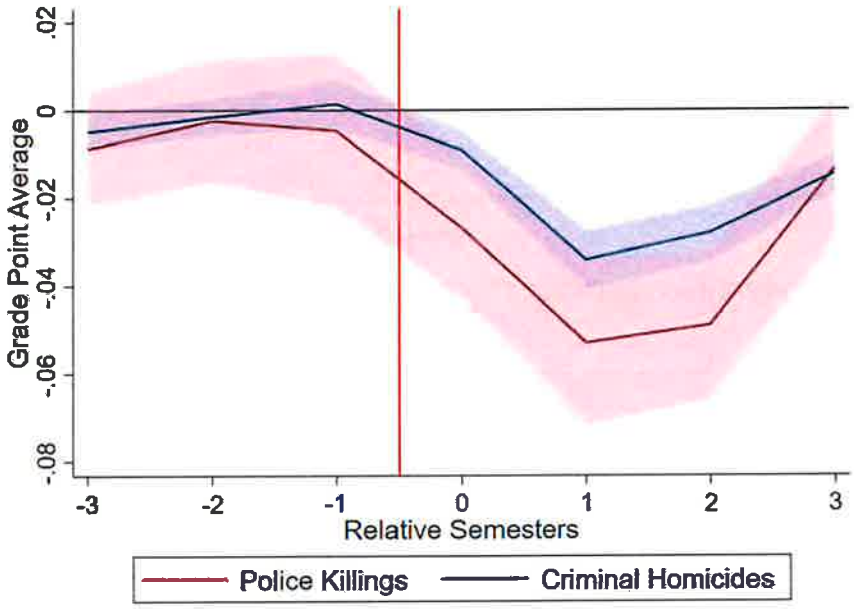
Notes: DD coefficients and 95 percent confidence intervals from estimation of Equation 1 on semester grade point average displayed, replacing time to treatment indicators with a post-treatment dummy. Standard errors clustered by zip code. Panel A estimates effects separately for each student race subsample (i.e, blacks, Hispanics and the pooled sample of whites and Asians). Panel B estimates effects separately for each suspect race subsample.

Figure VI: Effects on GPA by Suspect Weapon



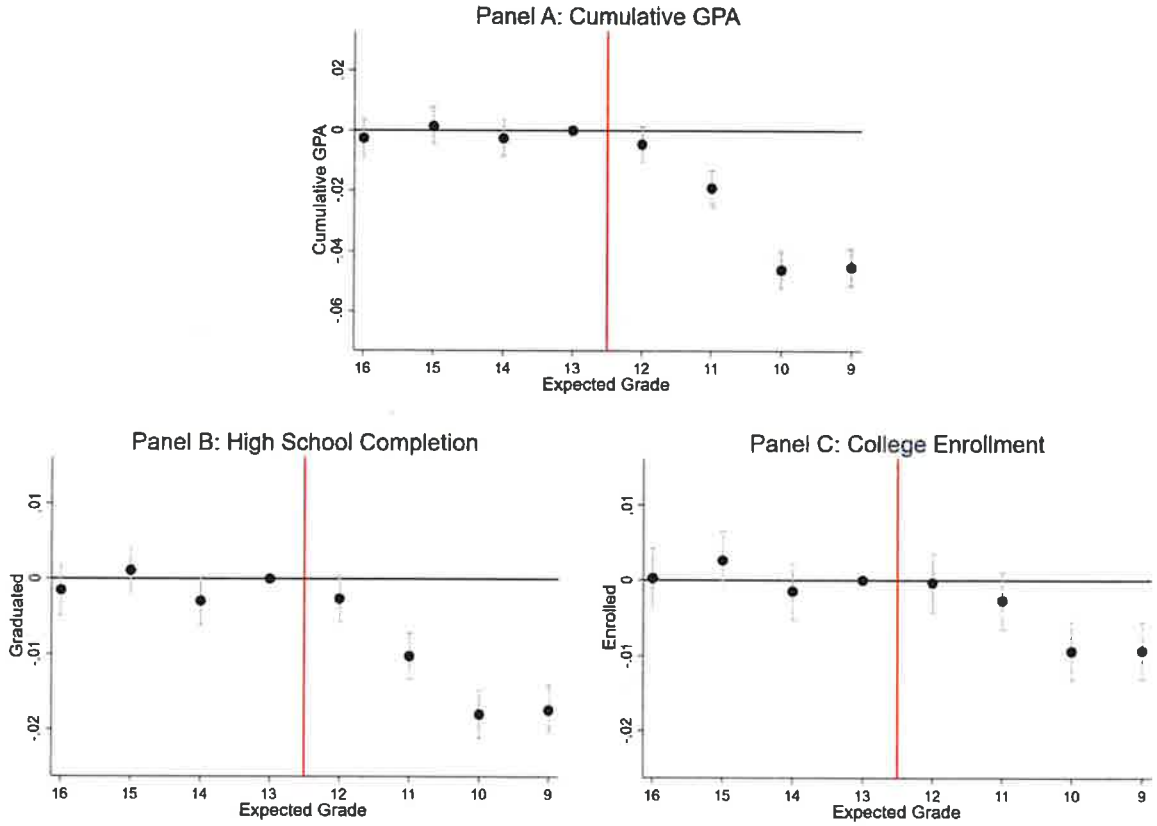
Notes: Graph shows DD coefficients and 95 percent confidence intervals from estimation of Equation 2 on semester grade point average, replacing the post-treatment by race interactions with post-treatment by weapon interactions. Standard errors clustered by zip code. Treatment defined as students living within 0.50 miles of an incident. Left panel includes all killings with contextual information, right panel restricts to killings of blacks and Hispanics with contextual information. Full estimation results are shown in Table IV, Columns 1 and 5.

Figure VII: Effects on GPA of Police and Criminal Killings



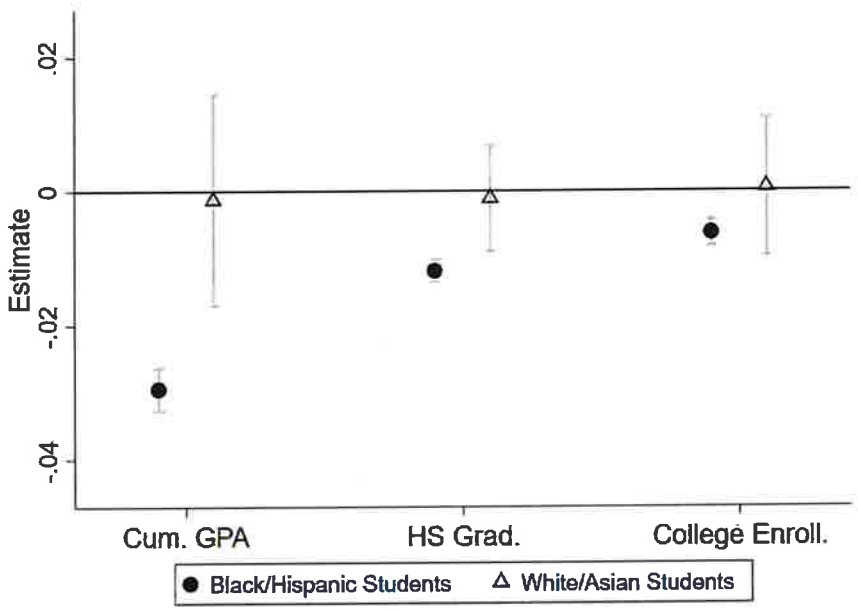
Notes: Graph shows DD coefficients from estimation of Equation 3 on semester grade point average. Standard errors clustered by zip code. Includes time-varying controls for the number of reported crimes and arrests at the block-level. Exposure to police and criminal killings defined as living within 0.50 miles of the incident location. Shaded areas represent 95% confidence intervals.

Figure VIII: Effects on Educational Attainment



Notes: Figures plot DD coefficients and 95 percent confidence intervals from estimation of Equation 4 on final cumulative GPA, an indicator variable for whether the student completed high school in the District (diploma, GED or special education certificate) and an indicator for whether a student enrolled in a post-secondary degree program within the calendar year after their expected graduation date. Standard errors clustered by student. Includes demographic controls. Treatment defined as students living within 0.50 miles of a killing in a given expected grade, where expected grade is determined by the year students began 9th grade in the District.

Figure IX: Effects on Educational Attainment by Race



Notes: Figure plots DD coefficients and 95 percent confidence intervals from estimation of modified version of Equation 4, replacing the full set of expected grade at treatment interactions with a simple post-treatment dummy set to 1 for treated observations in expected grade ≤ 12. Standard errors clustered by student. Includes demographic controls. Black circles represent estimation on black and Hispanic students. Triangles represent estimation on white and Asian students.

Appendix A: Supplementary figures and tables noted in text

Table A.I: Effects on GPA: Alternative Standard Errors

		Standard Errors			
Treat x Rel. Time	Coef.	cluster zip (1)	cluster zip, year (2)	cluster catchment (3)	cluster tract (4)
-7	-0.012	(0.012)	(0.012)	(0.015)	(0.011)
-6	-0.008	(0.011)	(0.010)	(0.012)	(0.009)
-5	-0.011	(0.010)	(0.011)	(0.010)	(0.008)
-4	-0.001	(0.009)	(0.009)	(0.010)	(0.007)
-3	-0.004	(0.008)	(0.010)	(0.008)	(0.007)
-2	0.002	(0.007)	(0.009)	(0.007)	(0.006)
-1	-	-	-	-	-
0	-0.038	(0.006)***	(0.008)***	(0.007)***	(0.006)***
1	-0.079	(0.009)***	(0.011)***	(0.010)***	(0.007)***
2	-0.070	(0.009)***	(0.010)***	(0.010)***	(0.008)***
3	-0.042	(0.011)***	(0.015)**	(0.012)***	(0.008)***
4	-0.021	(0.011)*	(0.014)	(0.013)	(0.009)**
5	0.001	(0.012)	(0.014)	(0.012)	(0.010)
6	0.005	(0.014)	(0.018)	(0.013)	(0.011)
7	0.006	(0.015)	(0.020)	(0.013)	(0.013)

Notes: Standard errors calculated with various methodologies in parentheses. Coefficients and zip code-clustered standard errors (shown in Column 1) are derived from main estimation results displayed in Figure II.

Table A.II: Effects on Perceptions of Safety

	Score (raw)		*Score (=1)*	
Question (scale 1-5, higher is safer)	Mean	Treat x Post	Mean	Treat x Post
How safe do you feel in the neighborhood around the school?	3.68	-0.137**	0.038	0.043***
		(0.054)		(0.011)
How safe do you feel when you are at school?	3.74	-0.053	0.037	0.015
		(0.056)		(0.009)
I feel safe in my school	3.57	-0.048	0.035	0.010
		(0.055)		(0.009)
Combined (avg score; min score)	3.66	-0.092**	0.075	0.035**
		(0.042)		(0.015)
Observations		91,358		

Notes: DD coefficients from estimation of Equation 1 on student survey responses, replacing time to treatment indicators with a post-treatment dummy. Standard errors clustered by zip code. Left column examines raw scores for each question, where higher values correspond to feeling more safe. Right column examines an indicator for each question, which is set to 1 if the raw score equaled 1 (least safe). The final row combines all three questions into an average safety score (left column) and an unsafe indicator (right column), based on whether students answered 1 for any of the three questions. Standard errors clustered by zip code. Sample is limited to students in grades 9 through 11 in 2014-2015 academic year who had not been exposed to police violence prior to the first survey wave and treatment is defined as those living within 0.50 miles of a shooting that occurred between the 2015 and 2016 survey administrations. Results robust to including previously treated students.

Table A.III: Matching Minority and Non-Minority Students

Panel A: Summary Statistics			
	White/Asian	Black/Hispanic	
	(Actual)	(Actual)	(Matched)
Household			
Poverty	0.47	0.78	0.43
English	0.54	0.30	0.47
8th Grade Achievement			
Proficient	0.45	0.33	0.45
Avg. Score	372	313	363
Parental Education			
HS+	0.39	0.22	0.40
College+	0.23	0.04	0.17
Panel B. Effects on GPA			
	White/Asian	Black/Hispanic	
	(Actual)	(Actual)	(Matched)
Treat x Post	-0.003	-0.031**	-0.029**
	(0.018)	(0.007)	(0.013)
Obs.	548,315	3,590,169	4,800,724

Notes: Panel A shows summary statistics for the actual sample of minority (i.e., black and Hispanic) and non-minority (i.e., white and Asian) students as well as for the matched sample of minority students. Up to ten minority students are matched to each non-minority based on free lunch status, pentiles of 8th grade standardized test scores, parental education (less than HS, HS, more than HS), cohort (within 3 years) and school. Panel B shows average effects on GPA from estimation of Equation 1 on GPA for each sub-sample. Observations in the matched minority sample are weighted by one over the number of matched minorities to each non-minority to maintain balance on matched characteristics between Columns 1 and 3.

Table A.IV: Effects on Absenteeism of Police and Criminal Killings

Post x Treat x	(1)	(2)	(3)	(4)
Police	0.006**	0.005**	0.007**	0.007*
	(0.003)	(0.003)	(0.003)	(0.004)
Non-Police	0.003***	0.002***	0.003***	0.002**
	(0.001)	(0.001)	(0.001)	(0.001)
$\beta_p - \beta_n$	0.003	0.003	0.004	0.005
$p(\beta_p = \beta_n)$	0.244	0.305	0.255	0.269
Sample	All	Restricted	All	Restricted
Neighborhood	Tract	Tract	Blk Group	Blk Group
Obs.	38,762,819	20,337,840	38,694,704	20,311,523
R-sq.	0.257	0.255	0.267	0.265

Notes: DD coefficients from estimation of Equation 1 on absenteeism, replacing replacing time to treatment indicators with interactions between type of violence and a post-treatment dummy. Standard errors clustered by zip code. Treatment defined as students living within 0.50 miles of an incident. Sample includes ten-day windows around each incident, with treatment re-defined in each window. Restricted sample limits the analysis to Census tracts that experienced both police and non-police killings. Neighborhood refers to the geographic level at which semester effects are controlled.

Table A.V: Comparing GPA Effects of Police and Gang-Related Killings

	All Students				*Black/Hispanic Students*			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Police Killings								
Any	-0.031***	-0.029***	-0.031***	-0.029***	-0.033***	-0.031***	-0.033***	-0.031***
	(0.006)	(0.006)	(0.006)	(0.006)	(0.006)	(0.006)	(0.006)	(0.006)
Non-Police Killings								
Any	-0.018***	-0.016***	-	-	-0.018***	-0.016***	-	-
	(0.002)	(0.002)	-	-	(0.002)	(0.002)	-	-
Gang-Related			-0.020***	-0.018***			-0.020***	-0.018***
			(0.005)	(0.005)			(0.005)	(0.005)
Not Gang-Related			-0.018***	-0.016***			-0.018***	-0.015***
			(0.002)	(0.002)			(0.002)	(0.002)
$p(\beta_P = \beta_N)$	0.030	0.027	-	-	0.012	0.010	-	-
$p(\beta_P = \beta_{N_G})$			0.140	0.133			0.070	0.063
$p(\beta_P = \beta_{N_N})$			0.026	0.022			0.011	0.009
Crime, Arrests	-	Y	-	Y	-	Y	-	Y
Obs.	1,922,635	1,922,635	1,922,635	1,922,635	1,653,541	1,653,541	1,653,541	1,653,541
R-sq.	0.712	0.712	0.712	0.712	0.696	0.696	0.696	0.696

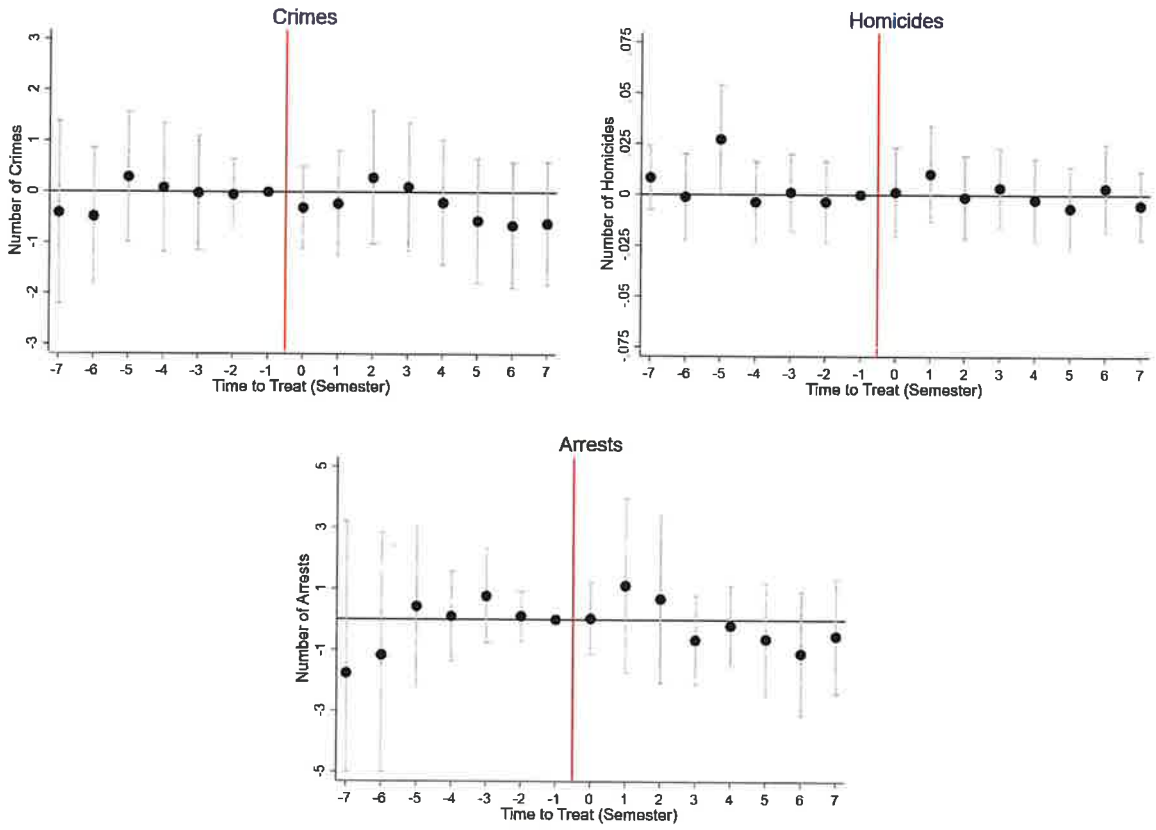
Notes: Coefficients from estimation of modified version of Equation 3 on semester grade point average, replacing the full set of leads and lags with the number of police and non-police killings of each type that occurred within 0.50 miles of a student's home in the current and previous semester. Standard errors clustered by zip code. Crime controls include the number of reported crimes and arrests that occurred in the student's Census block in the current and previous semester. Whether a non-police killing was gang-related was determined from incident descriptions provided by the newspaper database. Specifically, if the description contained the words "gang-related" or if either the suspects or the victims were described as having a gang affiliation or suspected gang affiliation, the incident was marked as gang-related. Left panel examines all students, right panel restricts analysis to black and Hispanic students.

Table A.VI: Effects on Cumulative GPA: Alternative Standard Errors

		Standard Errors			
Treat x Grade	Coef.	cluster std (1)	cluster std, cohort (2)	cluster zip (3)	cluster tract (4)
9	-0.045	(0.003)***	(0.004)***	(0.004)***	(0.004)***
10	-0.046	(0.003)***	(0.003)***	(0.005)***	(0.004)***
11	-0.019	(0.003)***	(0.002)***	(0.004)***	(0.003)***
12	-0.005	(0.003)	-0.004	(0.002)*	(0.003)
13	-	-	-	-	-
14	-0.003	(0.003)	(0.004)	(0.003)	(0.003)
15	0.001	(0.003)	(0.003)	(0.003)	(0.003)
16	-0.003	(0.003)	(0.003)	(0.003)	(0.003)

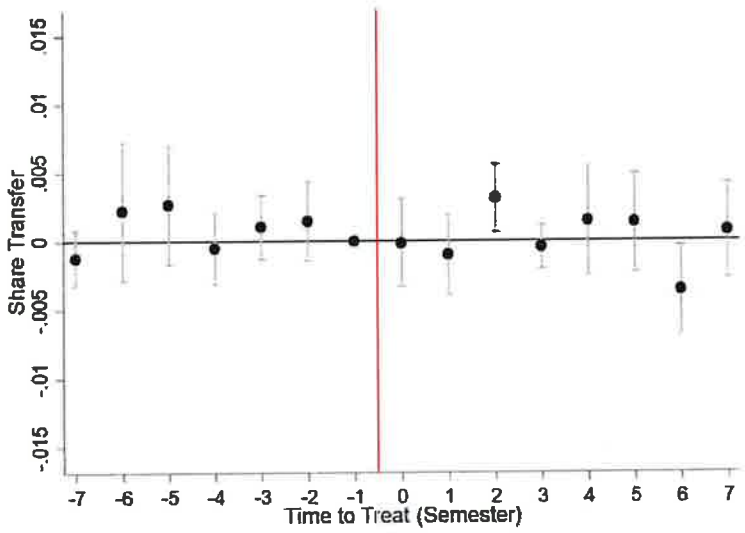
Notes: Standard errors calculated with various methodologies in parentheses. Coefficients and student-clustered standard errors (shown in Column 1) are derived from main estimation results displayed in Panel A of Figure VIII.

Figure A.I: Effects on Crimes, Homicides and Arrests



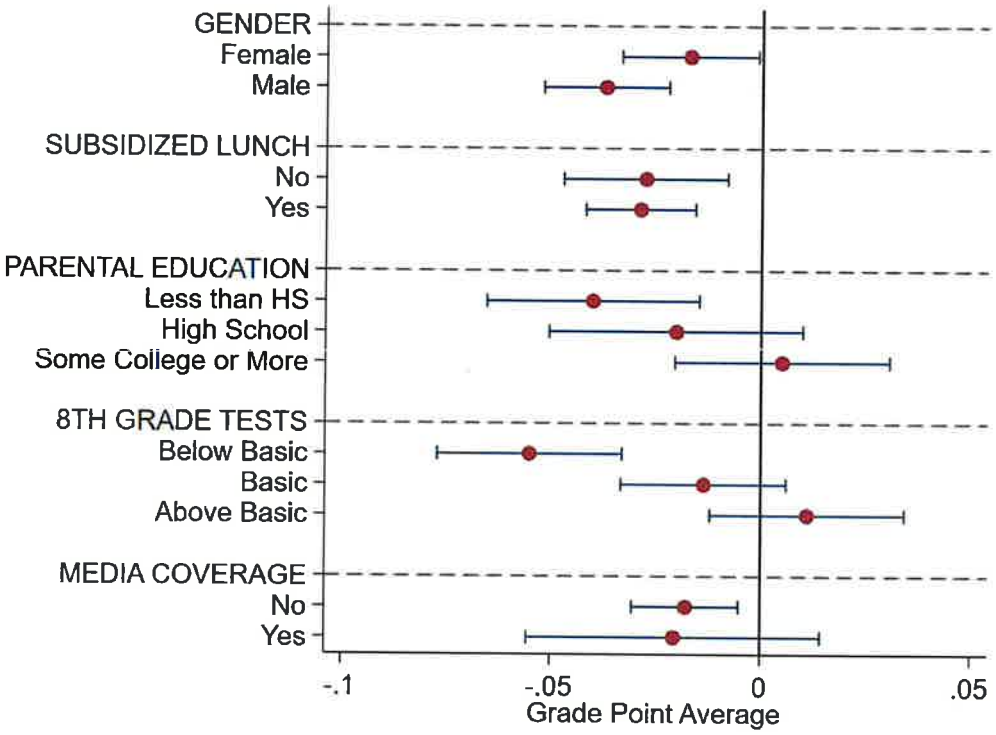
Notes: Graph shows DD coefficients from block-level estimation of Equation 1 on number of reported crimes, homicides and arrests displayed. Unit of observation is the Census block-semester and treatment is defined as blocks that experienced police killings. Standard errors clustered by zip code.

Figure A.II: Effects on Intra-District Transfers



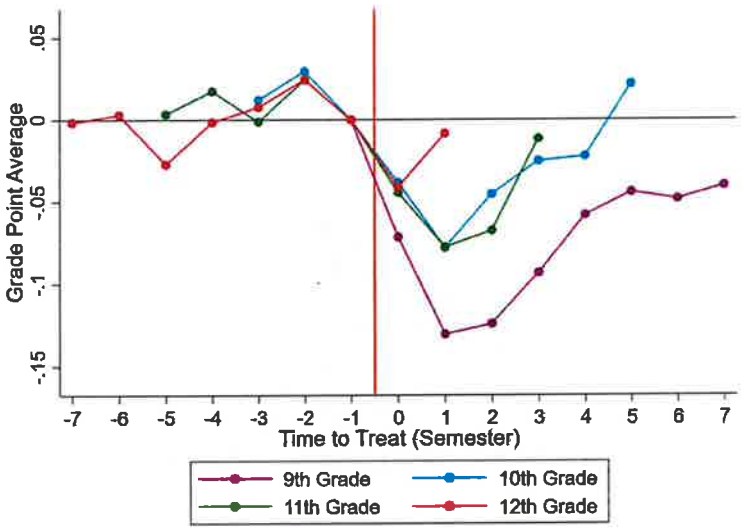
Notes: Graph shows DD coefficients from school-level estimation of Equation 1 on the share of enrolled students that transferred to other District schools in the following semester. Unit of observation is the school and treatment is defined as school catchment areas that experienced police shootings. Includes school board zone-semester fixed effects.

Figure A.III: Effects on GPA: Heterogeneity Analysis



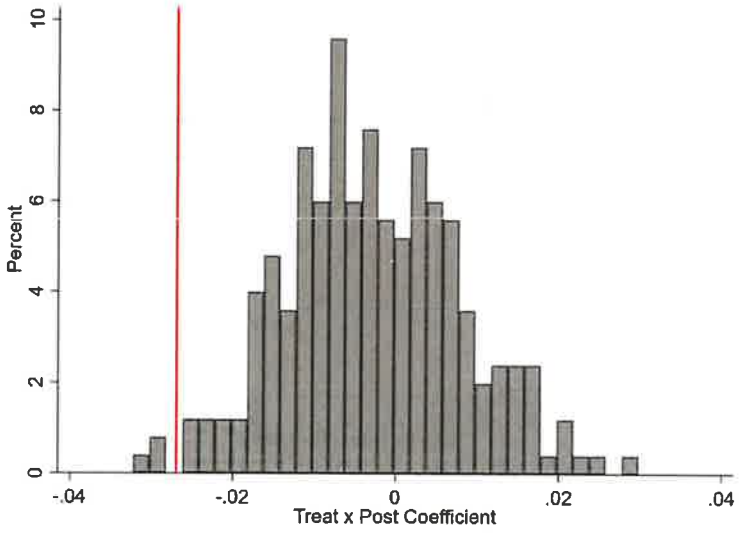
Notes: Graph shows DD coefficients and 95 percent confidence intervals from estimation of Equation 1 on semester grade point average, replacing time to treatment indicators with a post-treatment dummy. Each row corresponds to a separate regression on that particular subsample. 8th grade proficiency is determined by a student's average score on statewide 8th grade standards tests. Scores range from 150 to 600 and, per the state's rubric, are coded as "Below Basic" if less than 300 and "Above Basic" if more than 350. Standard errors clustered by zip code. Treatment defined as students living within 0.50 miles of an incident.

Figure A.IV: Effects on GPA by Grade of Treatment



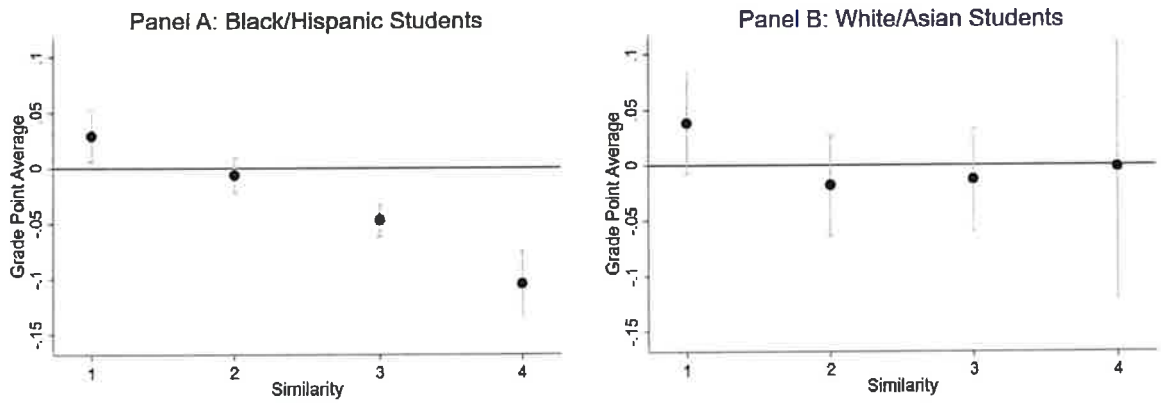
Notes: Graph shows DD coefficients from estimation of Equation 1 on semester grade point average, separately for students who were treated in the 9th grade, 10th grade, and so on. Standard errors clustered by zip code. Red vertical line represents time of treatment. Treatment defined as those living within 0.50 miles of an incident.

Figure A.V: Permutation Tests on GPA



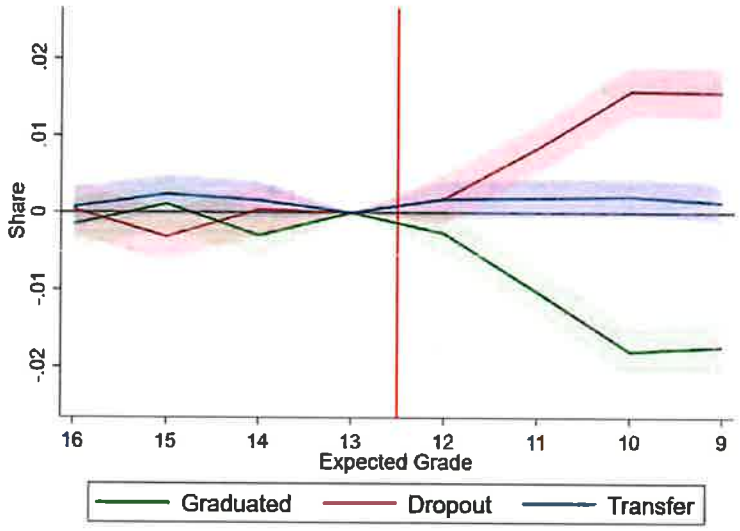
Notes: Figure shows a histogram of the Treat x Post coefficient from estimation of 250 placebo regressions on GPA using a simplified version of Equation 1. In each regression, I randomize the timing and location of 627 placebo shootings and re-define treatment based on proximity to the placebo events. The vertical red line represents the DD coefficient using the true treatment events as reported in Column 1 of Table II.

Figure A.VI: Effects on GPA by Student-Suspect Similarity



Notes: Figures show DD coefficients and 95 percent confidence intervals from estimation of Equation 1 on semester grade point average, replacing time to treatment indicators with interactions between a student-suspect similarity index and a post-treatment dummy. Similarity increments by 1 if the exposed student and suspect are of the same gender (male or female), ethnicity (black, Hispanic, white or Asian) or age group (suspect was under 25). Panel A restricts analysis to black and Hispanic students. Panel B restricts analysis to white and Asian students.

Figure A.VII: Effects on HS Graduation: Dropouts vs. Transfers



Notes: Graph shows results from estimation of Equation 4 on three separate outcomes: whether a student graduated from the District, whether a student transferred out of the District, and whether a student dropped out (i.e., did not graduate and did not transfer). Standard errors clustered by student. Includes demographic controls. Treatment defined as students living within 0.50 miles of a killing in a given expected grade, where expected grade is determined by the year students began 9th grade at the District. Shaded areas represent 95% confidence intervals.

Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police

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This article examines the ways in which colonial policing and punishment of Indigenous peoples evolved as an inherent part of the colonial state-building process on the connected 19th century frontiers of south-central Australia and western Canada. Although there has been some excellent historical scholarship on the relationship between Indigenous people, police and the law in colonial settings, there has been little comparative analysis of the broader, cross-national patterns by which Indigenous peoples were made subject to British law, most especially through colonial policing practices. This article compares the roles, as well as the historical reputations, of Australia's mounted police and Canada's North-West Mounted Police (NWMP) in order to argue that these British colonies, being within the ambit of the law as British subjects did not accord Indigenous peoples the rights of protection that status was intended to impart.

Keywords: colonial policing, colonial justice, Indigenous people and the law, comparative history

By the 1840s Indigenous peoples across Australia's colonies were considered British subjects, in theory protected by and subject to the rule of law. Yet as the historical records of 19th century Australia and other parts of the British Empire show, 'being within rather than beyond the pale of English law' did not accord Indigenous peoples the protection their status as British subjects was intended to impart (Evans, 2005, pp. 57–58). The dilemmas of attempting to impose a rule of law upon a people who in a legal sense were, but in a practical sense were not, subject to it were not unique to the Australian frontier, but were faced across the British Empire by colonial administrators who had to facilitate European settlement in regions already occupied by Indigenous peoples. Through a comparative analysis of Australian and Canadian frontiers, this essay will consider how policing and punishment evolved as

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an inherent 'part of the processes of colonial state-building' (Dunstall & Godfrey, 2005, p. 2). Most specifically, it will examine the practical ways in which the rule of law was brought to bear upon Indigenous peoples in order to ask how effectively colonial governments met the principle of providing Indigenous peoples with legal protection as British subjects. Although there has been some excellent Australian and other regional and national historical scholarship that has addressed the relationship between Indigenous people, police and the law across the British Empire and in other jurisdictions,[1] there has been surprisingly little comparative analysis of the processes by which Indigenous peoples were policed on 19th-century colonial frontiers that witnessed the subjugation of Indigenous sovereignty to the authority of the colonial state.[2]

While Canada's North-West Mounted Police (NWMP) was a centrally organised body that marched west, Australia's mounted police forces were regionally organised from colony to colony. In this essay we will concentrate on the policing histories of western Canada's prairies and of the interior corridor of south and central Australia as the two regions that offer most fruitful points of comparison. Aside from their shared origins as British colonies, these regions experienced similar difficulties in the expansion of settlement into the interior, a process that took place in the second half of the 19th century when, unlike in Australia's and Canada's earlier settled colonies, Indigenous peoples were already considered to be within the ambit of colonial law as British subjects.[3] As territories that came under colonial control relatively late in the history of the British Empire, they shared patterns in their demographic evolution and questions concerning the amenability of Indigenous peoples to British law. In both jurisdictions, colonial governments relied upon mounted police forces to facilitate Indigenous people's subjugation to colonial law and aid the establishment of agricultural and early industrial capitalist economies through land acquisition and settlement.

What do the parallels and divergences in these two colonial policing histories tell us about connected processes by which Indigenous peoples were brought within the reach of colonial authority? This question is important not only for examining comparable histories of policing Indigenous peoples, but also, more generally, for examining the ways in which national histories are remembered. In recent decades, both Australia and Canada have witnessed sometimes heated public debates that have challenged their national foundational stories of 'gentle' occupation. In these debates about national origins a key question remains: what roles have early frontier police forces served in social memory and what do their historical reputations tell us about the nature of our national myths about European settlement? In this essay, we will argue that despite enduring narratives in both nations about the relatively benign operation of law and order, mounted police forces were actively required to ensure the submission of Indigenous peoples to colonial rule. In both Australia and Canada, we argue, the responsibility of colonial mounted police to extend the protection of the law to Indigenous peoples was compromised by their requirement to ensure the negation of Indigenous sovereignty, and to implement effective policies of containment and surveillance.

CONCEPTIONS OF 'FRONTIER'

As the instruments of colonial government on the frontiers of European settlement, both Australia's mounted police and Canada's NWMP represented a rule of law that, by definition, would override Indigenous customary law and sovereignty and aid the effective occupation of the colonial state. Both were paramilitary forces that drew on officers from a military background, yet both held the essentially civil role of facilitating a smooth path to colonial settlement and bringing law and order to previously unsettled territories. In representing the apparent sovereignty of the colonial state, both also had a responsibility to carry out, in regions yet to be secured by European settlement, a government policy towards Indigenous subjects broadly conceived of in terms of 'protection'. Informed by the humanitarian rationale of the Colonial Office since the 1830s, the principle of protection was regarded as a first step towards Indigenous people's 'civilisation'. It was a principle firmly embedded in government intentions towards Indigenous peoples at the outset of colonial settlement in both jurisdictions. This was demonstrated in the Proclamation of South Australia as a British colony in 1836, when the first governor declared that all Indigenous peoples 'are to be considered as much under the safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British subjects' (*South Australian Gazette and Colonial Register*, June 3, 1837). The principles of protection, civilisation and assimilation were also embedded in Canada's Indian policy developed through the 1870s (Tobias, 1976).

Despite these common origins, some critical differences between these two colonial settings profoundly affected the capacity of the mounted police to implement a rule of law on the frontiers of settlement, and contributed to the evolution of different perceptions of what the role of police should be. But firstly, we need to consider variations in what the 'frontier' is taken to mean. In colonial Australia, the frontier figured not dissimilarly to the United States, as that phase and place of contact when Europeans first intruded into Indigenous country. But unlike the United States and some other of Britain's colonies like New Zealand or South Africa, Australia does not have a history of openly acknowledged land wars, or an accompanying 'romance of heroes and campaigns' as Tim Griffiths has put it. Rather, frontier conflict occurred with a significantly covert face; Australia's was a case 'not of public violence against a respected foe, but more frequently a [private] drama of ... fear and disdain' (Griffiths, 1994, p. 11). Despite the often covert nature of frontier conflict, the historical record demonstrates that the process of Australian settlement was characterised by Indigenous resistance to intrusion, which typically took the form of attacks on settlers, their stock and their property (Reynolds, 1982). Indigenous resistance was met, in turn, by an assertion of European force, either sanctioned by the state through mounted police forces, or unsanctioned in the form of private settler violence, designed to suppress that resistance (Foster et al. 2001; Nettelbeck & Foster, 2007a; Richards, 2008).

In contrast to this shape of the frontier, Canada has always defined its westward expansion in terms of 'managed development' (Loo, 1996, p. 200), determined by the cautious establishment of colonial law, order and administration. Traditionally, historians have argued that the Canadian west never fit the image of the frontier, in the sense formalised for the United States by Frederick Jackson Turner as a line that

separates 'civilised' from unsettled territories and which moves with the pace of European settlement (Turner, 1893). Rather, Canada's Northwest Territories have been conceived in terms of a distinct region — a 'rural hinterland' — separable from eastern Canada by more natural geographical borders (Jameson & Mouat, 2006, pp. 199–200), though more recent historiography on the Canadian and American west has drawn on both the concept of the frontier as a space 'in which geographical and cultural borders were not clearly defined', and the concept of borderlands as 'contested boundaries between colonial domains' (Adelman & Aron, 1999, pp. 815–16; Martin, 2006, pp. 1–4; Wrobel, 2009).

Unlike the interior of Australia, the agricultural settlement of western Canada in the last decades of the 19th century did not evolve in a region of first contact, the fur trade having established exchange between Indigenous peoples and Europeans there from the late 17th century (Smandych & Linden, 1995). From the outset, then, when the NWMP marched west in 1874 under the central authority of Ottawa, it was conceived that '[m]uch of the machinery of justice, including the courts and their officials, procedures, and the law itself, [would be] transferred to the west without significant change' (Macleod, 1975, p. 132). This differs from the Australian context, where mounted police forces were established by regional colonial governments to bring the rule of law to regions of first contact.

Perhaps most significant in shaping different conceptions of the frontier was that in Australia, in contrast to Canada's west, no land treaties were forged for the cession of Indigenous lands. Historians have argued that the land cession treaties established in the Canadian west through the 1870s fell far short of their promise, allowing Indigenous rights within the first decade to give way into 'oppression, land theft and starvation' (Harring, 2005, p. 92). Yet, at least formally, land cession treaties helped to map a process of colonial occupation which, it was presumed, would anticipate Indigenous people's assimilation within a capitalist economy. In Australia, in contrast, European settlement proceeded on an unclear premise that under the protection of British law Indigenous peoples would be 'civilised' in the course of European settlement. The rationale used to justify dispossession was that Indigenous peoples would be integrated as British subjects into the colonial state; thus they would never be regarded in political terms as sovereign peoples with distinctive land rights. By the time the colony of South Australia was being planned in the 1830s, the Colonial Office certainly intended that Indigenous land rights would be protected if they could be shown to exist. In 1835, a year before ships began to take British settlers to the new province, the Secretary of State had made clear to the panel of colonisation commissioners that they must 'shew, by some sufficient evidence, that the land is unoccupied, and that no earlier and preferable Title exists' (Colonial Office Records, CO 13/3, Grey to Torrens, December 15, 1835). Yet in as much as this policy was intended, it had no formal implementation; the *Foundation Act of 1834* had declared all lands of the colony 'waste and unoccupied', and despite its amendment in 1838 to allow the governor to enter into land cession arrangements, this did not occur (cf. Main, 1986). The lack of land cession arrangements across Australia's colonies shaped the way its frontiers would be policed for decades to come. A key characteristic of Australia's frontiers, as Henry Reynolds has argued, was the uncertainty of Britain's effective occupation; if a rule of government extends as far as the

exercise of its administrative machinery, then in Australia British sovereignty was only of 'a qualified and limited order' (Reynolds, 2006; 1996).

THE ROLE OF FRONTIER POLICE

These essential differences affected the ways mounted police could bring a 'rule of law' to the frontiers of south-central Australia and the prairie region of the Canadian west. The nature of their roles was also differently affected by the fact that they were constituted with different levels of legal power. Unlike their Australian counterparts, Canada's NWMP were entrusted with magisterial powers. Because officers served as 'stipendiary magistrates' and ex officio justices of the peace, they could function, even in the absence of regular courts, as a self-contained instrument of colonial law, able not only to apprehend but also to try and sentence offenders. Historians have suggested that, invested with such powers and in a context of isolation, the NWMP were 'virtually a separate government' (Beal & Macleod, 1984, p. 28; Marquis, 2005, p. 198). In Australia, the mounted police held no such powers. They were held instead to a more cumbersome line of authority, which created endless difficulties in policing remote districts according to legal requirements. On the frontiers of European settlement, Indigenous attacks on settlers' stock and property were endemic. Technically, police were required to respond by seeking warrants and making arrests where possible and, if a charge went forward, to take it before a court. In the absence of nearby local courts, police had to capture not only Indigenous suspects but also witnesses, and escort them in chains, possibly hundreds of miles, to the nearest magistrate for committal. The difficulties of capturing Indigenous prisoners in difficult terrain, long after the sheep or cattle had been taken, and then of transporting them hundreds of miles, were exacerbated by lack of police resources in keeping up with the ever-expanding line of settlement. While the NWMP went west as an advance 'buffer' to the cattle ranching industry, in Australia mounted police forces were shaped to keep pace with the expansion of settlement (Sturma, 1987, p. 19). Yet, compelled as they were to patrol large tracts of country in small numbers, mounted police presence lagged consistently behind the incursions of entrepreneurial settlers into un-colonised territories.

Settlers who 'paved the way' complained constantly to the government about lack of police protection against Indigenous attacks on their property. A consequence was that all too often settlers had the facility to 'take the law into their own hands', exacting their own form of frontier justice against Indigenous people beyond the eyes of the law.[4] Indeed, frustrated by the difficulties of the task they faced, police officials themselves would sometimes recommend that settlers do more to defend themselves by taking up arms against Indigenous aggressors. In 1863, struggling to manage the contested pastoral frontier of northern South Australia with limited resources, South Australia's Commissioner of Police, Peter Edgerton Warburton, urged that settlers strengthen their own defence by adequately arming their station hands; even supposing more police were available, he wrote, 'are they to shoot the Natives like dogs? Or are they to be sent there to relieve the Settlers from the necessity of taking care of their lives and property?' (GRG 5/2/1863/306 encl. 1590, SRSA, Police Commissioner to Chief Secretary, October 16, 1863). In his view, the foundational rationale of Indigenous people as British subjects placed mounted police in an inevitably vexed position on those frontiers where effective

occupation of the colonial state was not yet secured. While the task of police was in principle 'to preserve the peace by preventing violence' (Act to Consolidate and Amend the Law relating to the Police in South Australia, 1869–70, Part 2, clause 9), the reality of Indigenous resistance often made this a practical impossibility.

FORCIBLY IMPLEMENTING THE RULE OF LAW

What does this suggest about the mounted police's paramilitary function and the scope they had for use of force? As instruments of colonial governance, both Australia's Mounted Police and Canada's NWMP were enlisted to suppress the independence of Indigenous groups as sovereign peoples and bring them within the reach of colonial authority. According to Canada's foundational narrative, the NWMP 'brought justice to red and white man alike' (Stanley, 1940, p. 109; Walden, 1982). However, over the past three decades the romantic hue of this narrative has slowly begun to be challenged. For instance, in their pioneering but still relatively rare critical history of Canada's early federal police force, Lorne and Caroline Brown (1973, p. 10) argue that in contrast to the enduring story that the NWMP were formed in response to the Cyprus Hills massacre of Assiniboine Indians in 1873, as well as to eradicate the corruptive influence of unscrupulous whiskey traders and 'other white outlaws' from across the U.S. border, 'the primary reason for establishing it was to control the Indian and Métis population of the North West', which collectively threatened to impede the settlement schemes of eastern Canadian 'financiers and politicians'. More recently, Walter Hildebrandt (1994, p. 33) has lamented that 'it is [still] difficult to find a balanced history of the NWMP, largely because of the many previous laudatory accounts that have mythologized their mission.' Hildebrandt (1994, p. 63) paints a much less rosy picture of the relationship between the NWMP and western Canada's First Nations and Métis peoples, pointing to numerous examples of the mistreatment Indigenous peoples endured at the hands of NWMP officers 'who viewed them as inferior', an analysis in keeping with Louis Knafla's (1995, 2005, p. 25) broader argument that both before and following the settlement period, violence was 'part of the human landscape of the Western Canadian frontier' and 'was an integral part of the Prairie historical experience'.

While Canada's western settlement may have been more fraught than is typically reported in mythologising histories of Canada's mounted police force, the records of the NWMP seem to reveal little in the way of use of deadly force that would tarnish their reputation for a relatively nonviolent establishment of Canadian sovereignty in the west (Jennings, 1998, p. 41). One important reason for this was that the magisterial and other discretionary powers invested in the NWMP gave them the capacity to carry out government Indian policy with an aura of 'benevolent despotism' (Macleod, 1976, p. 22). Yet in Australia, the historical record shows that the mounted police were frequently called upon to use firearms in suppressing Indigenous people's resistance on the frontiers of settlement and bringing them forcibly within control of the law (see, for instance, Choo & Owen, 2003; Nettelbeck & Foster, 2007b). This implied something more than police occasionally 'suspending' the law as need demanded. As Julie Evans (2005, p. 59) describes, it entailed a deeper paradox in which contravening the law (through use of force) could be understood 'as actually producing the rule of law it simultaneously abrogat[ed]'.

The nature and degree of state-sanctioned violence against Indigenous peoples in Australia that went beyond the rule of law needs to be more closely interrogated in order to explain apparent Australian and Canadian differences in the policing of Indigenous peoples on the two frontiers. Although instructions on the use of weapons by mounted police in South Australia varied somewhat over time, it was broadly the case that weapons should be used only in self-defence, in apprehending a suspect resisting or escaping arrest, or in cases when armed resistance interfered in 'the execution of duty' (see, for instance, GRG5/28, SRSA, copies of General Orders 1840–1881, December 16, 1843 and November 25, 1844). Although, in principle, regulations about use of firearms were among the most clarified aspects of frontier policing, in practice they could be the most ambiguously interpreted. In a General Order issued in 1844 on the use of firearms, Commissioner of Police Travis Boyle Finniss reminded police, 'the Mounted Police especially', that although they were to use arms only in cases of 'extremity', they were still 'armed to enable them successfully to overcome opposition to lawful arrests, and to enable them to protect themselves against armed interference in the execution of their duty' (GRG 5/28, SRSA, General Order no. 25 of 1844). In principle, all fatalities were to be reported but, posted as they were in ones and twos in remote locations, this depended upon the word of individual officers. In 1884, the Protector of Aborigines asked for more information on a mounted constable's report from the central Australian frontier that recorded the fatal shooting of three Indigenous men. In his reply, the Sub-Inspector of Police acknowledged that because the shootings had 'occurred a long way beyond the boundary of any district', it was 'impossible' to obtain information from any other source than the mounted constable (South Australian Police Historical Society, 000319, Loc 2–2/43, Besley to Hamilton, December 22, 1884). As a newspaper correspondent wrote in 1891: 'Suppose the officer ... should be tempted in an indiscreet moment to tumble a few native evildoers "heels over head", who need be any the wiser?' (*Port Augusta Dispatch*, July 31, 1891).

On critical occasions when Indigenous attacks in remote areas threatened colonial security — and there were a number of such occasions between 1840 and the early 20th century on South and Central Australia's pastoral frontiers (see, for instance, Foster et al., 2001; Nettelbeck & Foster, 2007a) — use of force was not only dependent on the discretion of individual officers but was more openly sanctioned by the colonial state, involving the police in punitive actions against Indigenous peoples which, as Michael Sturma (1987, p. 26) puts it, 'at times amounted to official massacres'. Indigenous threats to colonial security posed the most difficult problems for successive colonial governments in reconciling a gap between the putative status of Indigenous peoples as British subjects and their actual status as sovereign groups who existed beyond the scope of British law. These occasions produced official reactions of what Evans (2005, p. 69) calls 'murky legality', in which 'we see Aborigines drawn as both enemies and criminals, susceptible both to warfare and punishment'. Wherever settlers' security was threatened, it was considered important from the earliest years of the colony that punitive action, to be effective, had to be swift and severe. This was the message expressed by the colony's first Commissioner of Police, Major Thomas O'Halloran, in 1841 when he noted, in response to Indigenous threats against colonists and their stock on the Murray river, that 'the punishment ought to be severe to prove to them our power'

(GRG 5/81, SRSA, Diary of Thomas O'Halloran, April 27, 1841). A similar reaction still held more than three decades later as the frontier of European settlement moved inexorably outwards into central Australia. In 1874, for instance, the same year that the NWMP marched west, the Barrow Creek telegraph station in remote central Australia was attacked by an Indigenous party. In their response, police were expected to use force to impart the lesson that Indigenous people 'cannot attack the whites with impunity'. On this occasion, the Commissioner of Police, William Peterswald, urged that during the punitive expeditions the Mounted Police undertook, 'a too close adherence to legal forms should not be insisted upon' (GRG 5/2/1874/261, SRSA, Commissioner of Police to the Chief Secretary, February 24, 1874).

At the same time, in both colonial Australia and Canada, Indigenous peoples themselves were either employed by or enticed to cooperate with the Mounted Police. Across the Australian colonies and in western Canada, Indigenous people (and Métis in Canada) aided police as guides, interpreters and trackers. In Canada the most famous of these was the Métis 'scout' Jerry Potts, also known by his Blackfoot name 'Bear Child', who, from 1874 and off and on for more than the next 20 years, played an indispensable role in helping the NWMP mediate with various Indigenous bands and extend the 'Queen's law' over the Canadian west (Foster, 1994; Touchie, 2005). Jerry Potts was only one of many who served as Métis and Indian 'scouts' between 1874 and the early 20th century (Beahen & Horrall, 1998; Dempsey, 1998), and who, in doing so, undoubtedly also played a key role in serving as cultural intermediaries.

However, unlike Canada, from the 1840s a number of the Australian colonies also employed armed, paramilitary forces of 'Native Police', Indigenous troopers who patrolled frontier districts under the supervision of white officers. The absence of such forces in the Canadian west, as well as the potential of Indian scouts to act as cultural intermediaries, may partly explain the lesser extent of violence in the Canadian west, and the relative ease for the NWMP in introducing a legal system based on the rule of law. While there is evidence suggestive of this argument in the extant early correspondence and records of the NWMP (National Archives of Canada, Government of Canada, Royal Canadian Mounted Police Records, RG 18, 1874–1905), to date Canadian legal and police historians have given little attention to scrutinising this type of evidence (for an exception to this see Gavigan, 2008).

Through its practice of more commonly enlisting force against Indigenous peoples, South Australia's colonial government was more repeatedly troubled than was the case in western Canada by the ambiguities of Indigenous people's legal status as British subjects. After the North-West Rebellion in 1885, Indians involved alongside the Métis in the uprising were charged with treason–felony, a charge that assumed they owed allegiance to Canadian sovereignty, in spite of the evidence that they did not (Harring, 2005, pp. 98–99). In contrast, after the Milmenrura people killed 26 of South Australia's colonists on the south-east coastline in 1840, the governor proceeded according to martial law, sending a paramilitary police party to capture and execute two Milmenrura men on the spot (Foster et al., 2001). Although the governor was subsequently rebuked by the Colonial Office for his technically illegal suspension of ordinary law, his Executive Council defended the action as being appropriate in cases where Indigenous peoples, having not 'acknowledged

subjugation to any power', could be regarded 'not as that of individual British Subjects, but ... a nation at enmity with Her Majesty's subjects' (Advocate-General, Minute to the Executive Council, *South Australian Register*, September 19, 1840).

Subsequent governors avoided voicing any such view so at odds with the proclaimed status of Indigenous people as British subjects, but the practical problems of dealing with recalcitrant Indigenous peoples on the fringes of the colony did not go away. In 1863, a decade before the NWMP marched west, the South Australian Commissioner of Police pressed the governor to recognise that in remote districts of sparse European settlement, the 'legal punishment' of Indigenous offenders was 'next to impossible', because Indigenous people, although British subjects in principle, would 'not yield to the covenants of the Law whilst they have the least power of resistance' (GRG 5/2/1863/306 encl. 1262, SRSA, Police Commissioner to Chief Secretary, August 7, 1863). The role of frontier police in suppressing Indigenous unrest in remote parts of the colony continued well after the frontier era might be considered past. As late as 1928, a series of punitive expeditions under Mounted Constable George Murray against the Warlpiri people in Central Australia resulted in the official deaths of 31 people but other reports suggest fatalities to be as high as 70 or more; this is known as the 'Coniston massacre' (for instance Wilson & O'Brien, 2003). During the court hearing for two Indigenous men who were taken prisoner, Mounted Constable Murray commented that his party 'shot to kill', for 'what was the use of a wounded black-fellow hundreds of miles from civilization?'(*Northern Territory Times*, November 9, 1928). His comment was telling about the workings of an unofficial culture that underpinned official violence on the Australian frontier.

POLICING AND SURVEILLANCE

Clearly, there were some key differences shaping Australian and Canadian frontiers in the late 19th century that might suggest divergences in the nature of their policing were more significant than their parallels. Yet beneath these divergences was the common task of establishing effective colonial occupation of lands previously held by sovereign Indigenous peoples; in this both police forces shared the goal, characteristic of Britain's colonies, of what Mark Finnane (2005, p. 54) calls 'disciplined dispossession'. This, of course, involved more than the disciplining of recalcitrant Indigenous peoples through physical force and the coercive use of law. Indeed, it clearly entailed a much broader matrix of 'disciplinary' and 'governmental' regimes.[5]

The reports of NWMP commissioners from its earliest years suggest that the efficiency of the NWMP in minimising violent conflict in the west had less to do with the force's mythic role of peaceful mediation than with the institution of an effective system of surveillance and curtailment of Indian mobility.[6] As access to their traditional means of living began to decline through the second half of the 1870s, Indigenous people were faced with little choice but to place themselves under the protection of the Queen's law, a protection offered only on the condition of their submission to Canadian legal authority. In 1876, Sub-Inspector Cecil Denny reported the words of Blackoot chief Crowfoot:

> We all see that the day is coming when the buffalo will all be killed, and we shall have nothing more to live on ... We are getting shut in, the Crees are coming in to

> our country from the north, and the White men from the south and east, and they are all destroying our means of living. (Commissioner Reports, December 30, 1876)

Under such circumstances, the NWMP were able to successfully enlist Indian support in the policing of their own people, not only in turning members of their own bands over to police but also in gathering information about the movements of other bands (August 18, 1876, Commissioner reports 1876). As Inspector James Walsh reported in 1877,

> I explained to them the law and told them they must be careful and obey it; that if one act was committed against it I would take the person or persons out of camp prisoners; that I would hold the Chief responsible for the good behaviour of the camp. (Walsh to Commissioner MacLeod, March 15, 1877; Commissioner Reports 1877)

He concluded, 'There is in every camp young men who are hard to manage and no doubt many among [them] will have to be watched; [but] I think the chiefs and old men will do their utmost to keep them in their proper place'.

From its early days in the west, the NWMP were absorbed with the need to police Indian movement along the border between the Canadian north and the United States south, as Indian bands escaping U.S. troops sought refuge in Canadian territory. When Commissioner James MacLeod learnt that a large band of Sioux had crossed the border and camped at Wood Mountain, he arranged with James Walsh for additional NWMP detachments to be posted to Wood Mountain and Cypress Hills which 'thus stationed would keep him continually informed of [their] movements', and for police to take possession of all firearms and ammunition (March 27, 1877, Commissioner James MacLeod to Secretary of State, Commissioner reports 1877).

The story of the Sioux being given sanctuary in Canada from U.S. troops, and of Sitting Bull's subsequent friendship with James Walsh, is a familiar part of NWMP iconography. But from the moment the Sioux arrived in Canadian territory, the NWMP were engaged with the task of getting them back across the border. Given that 'it would be impossible for the police to keep them in check over such an extended frontier', and appreciating the political repercussions of a diplomatic embarrassment with the United States, the Commissioner of the NWMP put every effort in persuading the Sioux:

> that they cannot be recognised as British Indians; that no reserves will be set apart for them, and no provisions made for their maintenance by our Government; that by remaining on our side they will forfeit any claim they have on the United States, and that after a few years their only resource of support—the buffalo—will have failed, and they will find themselves in a much worse position than they are at present. (MacLeod to Secretary of State, May 30, 1877: Commissioner reports 1877)

When Sitting Bull and the Sioux were finally induced by lack of choice to surrender to United States authorities in July 1881, with the promise of Canadian aid only on the terms that they would leave, Commissioner A.G. Irvine was able to report, as 'a matter of utmost congratulation', that over the four years during which the Sioux remained refugees on Canadian soil, the NWMP had monitored their '[e]very movement' and successfully maintained 'supervision and control' (February 1, 1882, Commissioner reports 1882). Throughout this period the NWMP held up their

purportedly firm but fair application of Canadian law to the American Sioux as a moral example to the ostensibly more fortunate Indigenous peoples who resided as legitimate British subjects north of the 49th parallel. However, with the demise of the buffalo in the late 1870s, the remaining Indigenous peoples of the Canadian west also had reason to question how well they were treated by the NWMP, despite the force's benevolent rhetoric of providing legal protection.

By 1880, as the era of starvation hardened for Indigenous peoples in the west, Irvine recommended that the NWMP force be increased by 200 men to take account of the changing environment. The 'intricacies and dangers of the Indian question', he argued, were not over and were increasing with the rise of want among the Indian population and the influx of settlers from the east. A starving Indian population, he warned, was 'a dangerous class requiring power, as well as care, in handling'. That a 'spirit of unrest' would show itself was certain, he felt, and 'if not suppressed in time, will result in periodical raids on the cattle and horses of settlers' (December 29, 1880, Commissioner reports 1880).

Recent Canadian historiography has begun to address how this suppression of potential unrest was affected through the criminalisation of Indigenous activities. In their evaluation of Indian crime and punishment in the North-West Territories between 1878 and 1885, Macleod and Rollason (1997) find that the NWMP came down hard on livestock theft as something that threatened colonial authority. Sidney Harring (2005, p. 96) also notes that while cattle theft was not initially policed, in accordance with a NWMP policy of establishing goodwill with Indigenous peoples, the policing of cattle theft in the era of Indian starvation 'became standard policing procedure'.

Historians have also argued that it was not just cattle theft but horse stealing in particular that the NWMP 'clamped down' hard upon as an activity imbued with powerful significance around economic and social standing in the traditional cultural order, and 'an important expression of Native autonomy' (Hubner, 1998, p. 53). Its criminalisation, argues Hubner, enabled the NWMP to 'circumscribe Indian movement and restrict Indian men to their reserves, symbolically crushing their way of life' (Hubner, 1998, p. 57). Sentences for horse stealing were particularly harsh, ranging from two to five years of incarceration with hard labour (Hubner, 1998, p. 62; Macleod & Rollason, 1997).

Recent historiography on the NWMP's role in containing Indigenous autonomy also traces the wider application of disciplinary measures they undertook in cooperation with the Department of Indian Affairs, as well as with the United States military over the border. These included use of the vagrancy law 'to remove undesirable Indians from wherever the authorities did not want them' (Hubner, 1998, p. 69); upholding the ration policy, which worked to further contain peoples on reserves; and enforcing the pass system that was initiated in 1885 as a temporary measure following the North-West Rebellion, but that continued after lobbying from the cattle ranching industry (Mayfield, 1979). The pass law required Indians to have a pass signed by an Indian agent in order to leave their reserve, at the risk of having rations withheld. The NWMP 'cooperated with the Indian Department in enforcing it as a matter of mutual convenience' (Macleod, 1976, p. 146), despite repeated anxieties that it had no legal validity and was in violation of the signed treaties of the 1870s that promised

that Indian groups subject to the treaties would continue to have freedom of movement over their former lands (Carter, 1990, pp. 150–151).

Through a regime of containment — via restriction on reserves, regulation of land use, and criminalisation of livestock theft — the goal of the NWMP was to turn Indian peoples of the Northwest Territories to the 'new order' of industrial capitalism (Graybill, 2007; Hubner, 1998, p. 67; Loo, 1996, p. 107). Macleod (1998, p. 120) has argued that from 1885 — following the North-West Rebellion, the accelerated changes brought about by the Canadian Pacific Railway, and into the era of starvation — the relationship between the NWMP and Indian peoples changed to demonstrate 'less emphasis on persuasion and cooperation and more on coercion'. In stronger terms, Harring (2005, p. 117) identifies such coercive strategies as a structured and institutionalised form of 'official lawlessness'. Police capacity for managing the Northwest Territories was strengthened in practical ways by the expansion after 1885 of a system of patrolling and police outposts in the Northwest Territories (Hubner, 1998, p. 65). While in early years NWMP postings had been determined by the locations of Indian hunting grounds and encampments (Stan, 1978, p. 91), expanded outposts were now placed close to major ranching operations and became 'important in protecting ranchers from the Indians' (Hubner, 1998, pp. 65–66). The expansion of such systems of surveillance, historians have argued, meant that from the mid-1880s the NWMP could no longer appear 'as an even-handed dispenser of justice' (Morton, 1998, p. 13); indeed 'for reserve populations the NWMP remained the ultimate coercive threat' (Marquis, 2005, p. 199).

In Australia, too, police patrols on the frontiers of settlement were integrally tied to the protection of sheep and cattle stations as part of a primary goal to protect developing economic interests. As the South Australian pastoral frontier moved north in the 1850s, the Commissioner of Police was keen to ensure that isolated stations would come within police patrols, even to the point of posting individual troopers on private stations if resources allowed; he noted to the government that as 'the welfare of the Province is so closely connected with the prosperity' of the setters who constantly pushed beyond the lines of police protection, it would be wise to expand police resources to bring them within the embrace of patrolling range (GRG 5/2/1856/239, SRSA, Commissioner of Police to Chief Secretary, April 14, 1856). In both Canada and Australia, the advent of telegraph communications contributed to the process of bringing vast territories within colonial surveillance. Near the Canadian border, the telegraph enabled the NWMP to work closely with the United States military in clamping down on Indian horse stealing through the relay of information 'before the culprits had even crossed the border' (Hubner, 1998, p. 66). In Australia, the overland telegraph line — erected across the entire continent between 1870 and 1872 — not only provided impetus for the expansion of European settlement into the centre, but enabled police officials from the distance of Adelaide headquarters to manage police responses to Indigenous aggressions in the remote centre (Nettelbeck & Foster, 2007a).

Brian Hubner (1998, p. 54) has written that the NWMP served to facilitate a process whereby 'Indians [were] moved off valuable land to allow for European settlement, and then concentrated on reserves to provide the arriving settlers with a ready pool of low-wage labour'. In Australia, it was only once the frontier era had passed — and with it the 'murky legalities' of suppressing Indigenous resistance to

European settlement — that the process of assimilating Indigenous people as a labour force into the pastoral sector really took place. This was a gradual development that perhaps had less to do with police as a direct instrument of governance than with the growing security of pastoral settlement, and with it, the increasing dependence of dispossessed Indigenous people on the colonial economy.

This process can be seen in the evolution of the system of ration distribution to Indigenous people, which had been systematised in South Australia as early as the 1840s. Initially, rations were distributed to Indigenous people from police stations as a 'form of compensation' for the loss of traditional means of subsistence but also, as the Protector of Aborigines put it in 1852, as 'a means of keeping them quiet' (Foster, 1989, pp. 4–5). A system of distributing rations from police stations helped the government to keep an eye on Indigenous populations. Yet as demand for Indigenous labour in the pastoral industry grew, police-managed ration depots diminished to become 'privatized' on pastoral stations (Foster, 2000, pp. 10–11). With the advent of the gold rush in the 1850s and the exodus of European labour from the pastoral sector, the pastoralists who had been lobbying for greater police protection to remove Indigenous people from their stations were now inviting Indigenous labour. With this aim, pastoralists actively lobbied the government to authorise ration depots on their stations, not only because control over rations provided security against Indigenous people killing their cattle in times of want, but because it also gave them the economic advantage of attracting and subsidising Indigenous labour (Foster, 2000, pp. 14–18).

By contrast, in western Canada the provision of rations was directly tied to the implementation of federal government Indian policy. The ration system was managed by Indian agents working under instructions for the Department of Indian Affairs and the NWMP played an assisting role throughout the period of its use as a technique of governmental control over Indigenous peoples. This difference suggests that while in Canada Indian policy was more globally directed towards eradicating traditional ways of life and making Indigenous people enter the colonial economy (Hogeveen, 1999), in Australia, where Indigenous labour was conceived as a support force rather than a potential economic force in itself, cultural traditions and lifestyles could be maintained, as long as they did not interfere with the working of pastoral stations (Foster, 2000, pp. 19–20).

THE MOUNTED POLICE IN HISTORICAL MEMORY

How do these colonial police forces figure in public historical memory, and what do their reputations tell us about the shape of our national mythologies? One of the most powerful founding myths of the Canadian nation-state, writes Ken Coates (1999, p. 141), is that unlike the 'omnipresent image of the USA so readily at hand — with its legacy of wars and armed occupations of Indian lands — Canada has treated the First Nations people fairly'. The centrepiece of this foundational story is the image of the NWMP. As Daniel Francis (1997, p. 64) describes it, this narrative regards the arrival of the NWMP in the western territories as the moment at which over 30,000 Indians, at war with one another and hostile to White invasion, are transformed into a peaceful community. This distilled memory of the NWMP as a mediating and peace-keeping force in managing the development of the west, and in demonstrating 'how law-abiding a frontier could be' (Francis, 1997, p. 30), remains powerfully in place in Canada, in

spite of recent historiography that challenges that reputation. Across south-western Canada, historic sites commemorating the path of the NWMP as they marched west sustain this foundational story. In regional museums, memorials, monuments and murals, the refrain that the NWMP provided protection to Indigenous peoples and brought law and order to the west is made true by its repetition.

In contrast to the NWMP, Australia's mounted police have had little historical reputation in the public domain. Mark Finnane (1987, pp. 4–5) has noted how through much of the 20th century, 'general histories of Australia have been largely indifferent to questions of law and authority', but this in itself has left relatively unchallenged an assumption that colonial police forces were the inevitable 'accompaniment of the transition to a stable social order'. This is perhaps best explained by the fact that Australia's narrative of foundation has, until recent decades, avoided the cultural-political history of its own land wars and accompanying state-sanctioned campaigns of Indigenous dispossession. Rather, for much of the 20th century, Australia's foundational narrative in the public historical sphere has been shaped around a 'pioneer legend'; at the heart of this foundational narrative is the figure of the settler who faces the hardships of a difficult new land through qualities of endurance and stoicism (cf. Curthoys, 1999; Hirst, 1978; Ward, 1958). In so far as Indigenous peoples have figured in this national story, they have done so as one of a number of natural adversaries faced by pioneers thrown up by a harsh and unyielding landscape, more akin to bushfire or drought than to political opponents over land. Within the context of the pioneer legend, there has been little place for the history of the mounted police as a state-sanctioned force that supported the expansion of European settlement through the active repression of Indigenous sovereignty. But this is not to say that no mythology surrounds the mounted police. Where a popular reputation exists, it tends to figure in benign terms whereby police administered the law and provided protection to Indigenous peoples against 'unscrupulous' settlers — that is, 'bad' settlers who are not seen as representative of the pioneer legend (Hopkins, 2005; Schmaal, 1999).

The reputation of 'regular' mounted police on Australia's frontiers of settlement should be distinguished from that of Native Police forces, which were established in a number of Australia's colonies as armed and mobile units of Indigenous troopers commanded by European officers. Native Police forces emerged specifically in response to the circumstances of the frontier, and operated as a specialised 'subset' of the mounted forces enlisted on Australia's frontiers (Finnane, 1994, p. 20). A body of historical work on Australia's Native Police forces has emphasised their particular operational requirements in carrying out the task of Indigenous subjugation — a task for which Queensland's Native Police earned a particularly notorious reputation for violence (cf. Fels, 1988; Nettelbeck & Foster 2007a; Richards, 2008; Roberts, 2005; Rosser, 1990). Even so, influential as these histories of Native Police forces have been in developing the contemporary historiography of frontier policing, they tend to examine the actions of the Native Police as discrete organisations within their own regional contexts and do not claim to deal with the degree to which the roles and powers of Native Police forces overlapped with those of regular mounted police.

The dearth of an historical reputation for Australia's colonial police has altered somewhat in the past two decades with a rise in historical work examining the

criminalisation of Indigenous resistance to European settlement, and the role of police and systems of law in suppressing that resistance.[7] Yet this historiographical trend has met with resistance. The heated debates in Australia over the past decade about the character of the nation's colonial past — the so-called 'history wars' — can be seen as a symptom of reluctance in many quarters to relinquish the familiar traditional story that Australia was settled peacefully. Keith Windschuttle's controversial 2002 book *The Fabrication of Aboriginal History*, which received considerable publicity, was designed to recuperate a benign narrative of British settlement in which an effective rule of law legitimately brought civility, order and good government to the Australian colonies.

CONCLUSION

The operations of Canada's North-West Mounted Police and Australia's colonial mounted police forces were clearly different in some fundamental ways. Perhaps the most significant of these, in terms of how they were enabled to police the frontier on the ground, was the considerable leverage over Indigenous peoples that the NWMP held from the outset, compared to their Australian counterparts. This leverage arose primarily from their larger numbers as a centrally organised force and from the practical authority they gained from land cession treaties. The NWMP also backed their power of persuasion with the threat of legal authority and military force to convince Indigenous peoples that they were better living under Canadian sovereignty and the Queen's law than others caught south of the 49th parallel.

Yet these differences in the operations of Australian and Canadian mounted police forces also help to illuminate the central parallel between them: that is, that the concept of Indigenous protection under the law was a double-edged sword. Along with the 'gift' of British subjecthood for Indigenous people, the application of the 'rule of law' entailed an explicit agenda of subjugation. The two intents of legal protection and actual subjugation were, in practice, inextricably combined. On Australia's frontiers, British subjecthood was less a 'gift' to Indigenous people enshrined in law than a harsh lesson to be learnt through use of force. While the status of British subjects was intended to protect Indigenous people from unauthorised violence, authorised violence was in practice periodically imposed upon them as a sign of their subjugation to the Crown and the negation of their sovereignty. In the Canadian west, the protection afforded Indigenous peoples as British subjects was fully conditional upon their promise of subjugation to colonial authority.

In neither country, however, does the role of state-sanctioned policing have a significant place in the historical memory of how Indigenous sovereignty was dismantled in the transition to the colonial state. In Australia, the mounted police still tend to figure as a minor extension of the pioneer story, despite their historical place as a significant instrument of colonial rule. In Canada, despite recent historical work challenging the powerful mythology surrounding the peaceful settlement of the Canadian west, there is still relatively little acknowledgment of the role played by the NWMP in the implementation of national policies of Indigenous containment and surveillance. Responding in the Australian context to efforts by neo-conservatives to reinvigorate a traditional foundational story of gentle occupation and good government, Mark Finnane (2005, p. 55) notes that the fact that 'such arguments can still generate such popular appeal ... highlights the importance of more sustained histori-

cal examination'. A detailed study of the origins of mounted police forces and their exercise of power and authority on Britain's colonial frontiers can provide a more adequate starting point for illuminating the practical ways in which the creation of the settler state took place on the back of Indigenous dispossession.

Endnotes

1 Most notably in the Australian context is the work of Cunneen (2001), Finanne (1994), and Neal (1991). For an overview of literature on other 19th century British White-settler colonies, including Canada, New Zealand, and the Cape Colony, see Smandych (2009).

2 For significant exceptions to this, see Anderson & Killingray (1991); Deflem (1994); Evans et al. (2003); Graybill (2007); McKenna (2006); Marquis (2005); Richards (2008); and Williams (2003). For a related discussion of the benefits of comparative history, see Coates (2005).

3 Today the prairie or plains region of western Canada roughly encompasses the southern and central parts of the provinces of Manitoba, Saskatchewan and Alberta. From the time of the founding of the North-West Mounted Police (NWMP) until 1905, this entire region was part of the Northwest Territories. However, from early in its history, the jurisdiction of the NWMP also extended into the eastern interior part of present-day British Columbia and the more northern territory of the Yukon. For the purposes of the current comparative analysis, we restrict our attention to South-Central Australia and the prairie region of western Canada as regions that shared similar timelines as well as legal and demographic issues in their development.

4 There is a large body of historiography on conflict on Australia's frontiers. For recent examples see for instance Attwood & Foster (Eds.) (2003), Connor (2002).

5 For Canadian and Australian studies that illustrate this, see: Buti (2002); Cunneen (1999); Hogeveen (1999); Kidd (1997); Mazerolle, Marchetti, & Lindsay (2003); Miller (2008); Milloy (1999); Pettipas (1994); Raftery (2006); Smith (2009).

6 See for instance: Hubner (1998); Loo (1996); Macleod & Rollason (1997); Satzewich (1996).

7 See for instance: Anderson & Killingray (Eds.) (1991); Cunneen (2001); Finnane (Ed.) (1987). For regional studies, see for example: Choo & Owen (2003); Nettelbeck & Foster (2007b).

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I grew up in Montreal. I don't shout racism all the time. But it happens. I tell my children to be careful, and to be polite to the police.

It's almost normal to get pulled over. It's going to happen. You have to parent differently. You tell your children to stay out of the way of the police [...].

I have tons of experiences. I am often afraid for my children. So far, so good.

A Black mother

Foreword

The troubling testimony from this mother, whose fears for her children extend to the point of telling them to avoid the police, was one of the most compelling moments during our consultation on racial profiling and its consequences. In just a few moving words, she was able to illustrate the distress caused by racial profiling and its impact on our society.

Some may find it difficult to grasp the reality of racial profiling and systemic discrimination in Québec. It can be difficult to understand the suffering of its victims, because it is not easy to put yourself in their shoes. However, far from any dramatization, this report clearly reflects all of the submissions collected during the course of this consultation.

All parties had their say, and through a process of collective disclosure, the reality of Québec society was revealed, in all its diversity. The result: an objective and balanced report that meets the expectations of the public.

In September 2009, the Commission des droits de la personne et des droits de la jeunesse felt the need to launch this consultation in order to find potential solutions to counter racial profiling and systemic discrimination by focusing the discussion on the situations experienced by youth from racialized communities between the ages of 14 and 25.

The Commission began by listening to nearly 150 youth and their parents, experts, and representatives from community groups, all of whom agreed to share their experiences related to racial profiling and discrimination in the educational system, the youth protection system and the public security sector.

Based on their stories, and the results of research and analysis of racial profiling, the Commission published a consultation document in March 2010, which presented key questions designed to help frame the written presentations and exchanges during the public hearings held in Montréal and Québec City, in May and June 2010. The Commission received 54 written submissions, and 75 individuals – researchers, representatives from community organizations or institutions, and engaged citizens – participated in these public hearings.

This report contains our recommendations, but it is important to remember that this consultation has also created expectations. These individuals, who took part in the consultation, and the communities that they represent want to see an increase in society's awareness of what they experience, along with an acknowledgement of the need for change and the implementation of concrete actions.

This report invites Québec to meet these challenges, which will not disappear simply because they have been expressed. As a society, we must work together to overcome the problems associated with racial

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profiling and systemic discrimination. Citizens, community organizations and decision-makers all have a role to play in fighting the prejudices that sustain racial profiling and systemic discrimination.

In order to change institutions, governments and decision-makers must examine the laws, standards and organizational policies whose effect, which is often subtle and even involuntarily, is to reinforce the exclusion or marginalization of racialized minorities.

During our consultation, we discovered that interesting initiatives and promising projects and partnerships already exist, but these are generally the result of isolated acts rather than institutionalized practices. Declarations of principle condemning racism and discrimination must be accompanied by real political commitment, leading to the implementation of preventive measures and effective remedies for the victims.

The denial of racial profiling must be replaced by official recognition of this form of discrimination, along with the establishment of accountability procedures that will force those in authority to answer for their actions with objective data. In order to ensure the success of such an ambitious program, institutions must allow and encourage the participation of racialized groups in the search for solutions, especially through close community involvement with their efforts.

It is also vital for all of the individuals and representatives from organizations and institutions that participated in the consultation to adopt the recommendations in this report.

We cannot allow ourselves to sink into apathy or despair. Our recommendations are viable paths to change that can make a difference, but the solutions will only become reality with the support of racialized groups and the organizations assisting them.

This report is the result of two years of sustained work by the Commission staff, but it is only a starting point. If the right to equality as set out in the Charter of Human Rights and Freedoms is ever to truly become reality for all, we must continue to work together.

In closing, we would like to thank all of the individuals and organizations that participated during the various stages of the consultation. Each of them brought us a unique insight into the issue of racial profiling. We would especially like to thank the community organizations for their ongoing commitment, the researchers for their expertise and innovative ideas, the institutions and government departments for their generous collaboration, and above all, the many youth and their parents who demonstrated their trust by sharing their testimony with us. This report belongs to them.

The Consultation Committee

Gaétan Cousineau
President of the Commission des droits de la personne et des droits de la jeunesse

Emerson Douyon
Member of the Commission des droits de la personne et des droits de la jeunesse

Patricia Rimok
President of the Conseil des relations interculturelles du Québec

INTRODUCTION

The mission of the Commission des droits de la personne et des droits de la jeunesse (the Commission) is to ensure the promotion and respect of the principles set out in the Charter of Human Rights and Freedoms[1], a quasi-constitutional law. The Commission is specifically mandated to ensure that Québec's laws, by-laws, standards and institutional practices, both public and private, comply with the Charter, which prohibits discrimination based on "race"[2], colour, ethnic or national origin and religion in the exercise of human rights and freedoms. Based on this responsibility, the Commission decided to conduct a public consultation on racial profiling.

Although racial profiling is not a new phenomenon, it has only recently been recognized as a form of discrimination and a violation of the right to equal protection from discriminatory harassment, rights that are explicitly protected by Sections 10 and 10.1 respectively of the Québec Charter.[3] The term was invented in the United States to designate policies and practices employed by police in applying enforcement actions directed at members of particular racialized groups[4] based on prejudices or stereotypes without factual grounds or reasonable suspicion for doing so.[5] In 2003, the Ontario Human Rights Commission published the results of a wide-ranging inquiry detailing the various forms of racial

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1 R.S.Q., c. C-12 (the Charter).

2 Although the term "race" appears in the Québec Charter and in most of the anti-discrimination provisions of international instruments and other national legislation, the Commission insists on repeating a warning with respect to the use of this word in this report. Although the idea of biological races has no meaningful value in science, [translation] "one cannot say the same of 'social race,' i.e.: race as a social construct. Moreover, prejudice and discrimination based on race, as well as the resulting inequalities, remind us that race, while originally an ideological fiction, nevertheless has had very real social effects that cannot not be neglected." Daniel DUCHARME and Paul EID, "La notion de race dans les sciences et l'imaginaire raciste: la rupture est-elle consommée?" in L'Observatoire de la génétique, No. 24 – September-November, 2005, [on line]. http://www.omics-ethics.org/observatoire/cadrages/cadr2005/c_no24_05/c_no24_05_02.html (page consulted on March 7, 2011).

3 It should also be noted that racial profiling violates the right to equality that is guaranteed by *the Universal Declaration of Human Rights* (art. 7), *the International Covenant on Civil and Political Rights* (art. 26) and the *Canadian Charter of Rights and Freedoms* (sec. 15).

The Charter, sec. 10: Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.
The Charter, sec. 10.1: No one may harass a person on the basis of any ground mentioned in section 10.

4 In this report, the Commission prefers to use the term "racialized group" instead of "racial group". The reason for this choice is to emphasize that, far from corresponding to an objective reality, the concept of "race" refers to an essentializing and stigmatizing category applied by the majority group to minorities that were formerly colonized or subject to slavery.

5 See AMERICAN CIVIL LIBERTY UNION (ACLU) of NORTHERN CALIFORNIA, "Operation Pipeline," *Executive Summary*, Task Force on Government Oversight (September 1999), [on line]. http://www.aclunc.org/discrimination/webb-report.html; Summit on police services and race relations and racial profiling, Canadian Race Relations Foundation, Toronto, November 2002. The phenomenon of racial and ethnic profiling is well documented in Europe. See: Radouane BOUHLAL, R., *Rapport alternatif d'ENAR, Rapport supplément : Le profilage ethnique en Belgique, 2009/2010*, fact sheet no. 40, June 2009; Open society institute, *Profiling Minorities: A Study of Stop-and-Search Practices in Paris, 2009; Open society institute, Addressing Ethnic Profiling by Police A Report on the Strategies for Effective Police Stop and Search Project*, 2009; Open society institute, *w* 2009.

profiling found in the public sphere in Ontario.[6] The Québec Commission has made fighting racial profiling one of its priorities. In 2005, it adopted a definition of racial profiling that reflects the systemic nature of this form of discrimination:[7]

> "Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.
>
> Racial profiling includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed."

Like most other types of discrimination, racial profiling usually takes on subtle and insidious forms. Therefore, it is no simple matter to prove that a particular police action was not based on factual grounds or a reasonable suspicion, but rather on the colour or "race" of the targeted person. In addition, pulling a person over or issuing a ticket may be a response to an actual unlawful act. However, as set out in the second paragraph of the preceding definition, when police tend to penalize or scrutinize racialized persons more closely given equal offences or crimes, it is a form of systemic racial profiling that is characterized by a double standard.

Since 2003, the Commission has received and processed many complaints of racial profiling, mainly involving police officers, but also involving other public and private organizations. Although it is necessary, the system for handling individual complaints has showed its limitations. In fact, this type of remedy is not always the most appropriate way of revealing the systemic dimension of racial profiling and persuading the institutions concerned to apply structural remedies to their organizational standards and practices, from a preventive perspective.

That is why the Commission has sought new and wider-reaching approaches, while continuing to process individual complaints and represent complainants before the Court with full vigour. It was from this perspective that the decision was made to conduct a public consultation on racial profiling and its consequences. The consultation was intended to give a voice to victims of racial profiling, to stimulate a discussion of potential solutions, and to create a broader understanding of the consequences of this type of discrimination for Québec society. The Commission is of the opinion that such an understanding is vital, because the public appears to be unaware of the scope and systemic nature of racial profiling. However, there can be no doubt of its existence, with numerous studies having demonstrated that security forces, and notably the police, tend to scrutinize and suspect racialized minorities more often, without factual or valid grounds, and punish them disproportionately in the application of laws and by-laws.

The Commission opted to hold a consultation on the profiling and discrimination experienced by racialized groups. In today's Québec, the "racialized" groups that are most likely to be victims of racial profiling are Blacks, persons of Latin American, South Asian or Arab origins, and Muslims as well as Aboriginals persons. Although Aboriginal persons are likely to be victims of racial profiling

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6 ONTARIO HUMAN RIGHTS COMMISSION, *Paying the Price: The Human Cost of Racial Profiling* – Report, 2003, p. 7, [on line]. www.ohrc.on.ca

7 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Racial profiling: Context and Definition*, Michèle Turenne, (Cat. 2.120-1.25), 2005, p. 13.

and systemic discrimination, just like other racialized minorities, the Commission wishes to make it clear that the scope of the racial, cultural, economic, educational and social disadvantages faced by Aboriginal persons greatly exceeds the scope of this consultation. Many of the problems faced by Aboriginal persons result from centuries of alienation and the application of colonial and discriminatory policies. The consequences of these policies persist today, and cannot be ignored. For example, the existence of "reserves" and land claims constitute a source of political conflict. That being said, even though the problems faced by Aboriginal persons extend beyond the framework of this consultation, Aboriginals living in major urban centres are directly affected by the same racial profiling and systemic discrimination that all of those who belong to racialized groups suffer.

Although racial profiling affects racialized persons of every age, it soon became apparent that youth are the most likely to be targeted; partly because they are major users of public spaces (e.g.: parks, shopping centres, metro stations, etc.), but also because of stereotypes that attribute a greater propensity for anti-social behaviour to them. Based on this realization, the Commission decided to focus its consultation on racialized youth aged between 14 and 25.

Of course, racial profiling is only one of the manifestations of the discrimination experienced by young members of racialized minorities. Although discrimination persists in a number of sectors, such as the job and housing markets and in the area if sports, the Commission limited its consultation to racial profiling and systemic discrimination in the public services provided by institutions that play a key role in the lives of youth: public security, the education system, and the youth protection system. As will be seen in this report, the available data and the testimony that was heard confirm that racialized youth are at greater risk of being punished for violations of their school's code of conduct, forced into educational paths that are not suited to their needs, and reported and placed under the care of the Director of Youth Protection (DYP). Although it does not constitute racial profiling as such, some of the issues raised by these problems reflect the logic of systemic discrimination. In light of this, the Commission concluded early on in the process that the consultation would be broader than the issue of racial profiling exclusively, and would instead embrace the broader issue of systemic discrimination.

The consultation procedure applied by the Commission focused on finding solutions, and not assigning guilt. It was from this perspective that individuals, organizations, government departments and public institutions were asked to provide their testimony. The Commission also felt that it was important to elicit the participation of citizens, organizations and institutions located outside of Montréal, specifically in Québec City, Sherbrooke, Gatineau and Trois-Rivières. However, despite our efforts, few regional organizations and institutions felt that our consultation related to them. We noted that, outside of Montréal, there is a general tendency to believe that racial profiling and discrimination are exclusively a Montréal problem, given the high concentration of ethnic and racialized minorities in the city and its suburbs. Certain public agencies and institutions went so far as to deny the existence of racial profiling and discrimination in their regions. The Commission regrets their lack of interest and attitude of denial, because ethnoracial discrimination also occurs in the regions, regardless of how few of their residents are members of minorities. It is important to remember that discrimination not only affects the individuals concerned, but also generates significant social costs.

Before undertaking the formal consultation, the Commission conducted a preliminary consultation during the summer of 2009, holding a series of meetings with representatives of approximately 100 different organizations in order to measure their support for and interest in participating in its efforts. In the fall of 2009, the Commission collected more than 150 accounts from people relating their experiences of racial profiling and discrimination. Based on these accounts, and on studies and research pertaining to this subject, the Commission published a consultation document in early 2010. This document served as the basis for public hearings that were held in Montréal and Québec City in the

spring of 2010. The Commission received a total of 54 briefs, 43 of which were presented during the public hearings.

During the consultation, community groups, public institutions, social workers, researchers and citizens shared their analyses, expertise and experience with a view to proposing possible solutions. It should be noted that the Commission insisted on involving government departments in the process, and organized an inter-ministerial panel to that end. As a result, there were three meetings of representatives from six departments between August 2010 and January 2011 for the purpose of discovering the measures that they had implemented or were planning to implement in order to prevent racial profiling and systemic discrimination in the public institutions under their authority.

This consultation report would not have been possible without the valuable contributions from all of these groups that expressed their confidence in the Commission and its role. It is our hope that the report will contribute to bringing about real changes in public institutions in the form of more inclusive approaches that enable youth from racialized minorities to participate in Québec civic life in complete equality.

1. GENERAL CONTEXT

Although all Québec citizens formally have equal rights today, racialized groups are still the target of individual attitudes and behaviours tinged with prejudices, as well as discriminatory practices and organizational norms, which have deep historical roots. The cumulative effect on members of these groups resulting from structural disadvantages inherited from the past is still felt in every sphere of public life today. That being said, it cannot be denied that, given its desire to accept diversity, Québec society has implemented a large number of measures in recent decades aimed at enhancing the participation of racialized groups and immigrants in public life. However, these measures are too often limited to diversity management strategies that ignore the discriminatory procedures and subtle forms of racism that continue to reinforce the exclusion and marginalization of minorities. Discrimination and racism are permitted to flourish without restraint, because they occur within a sort of blind spot in terms of public policy. This prevents initiatives aimed at promoting inclusion from achieving their objective.

Under these conditions, it should come as no surprise that the devastating impact of racism and discrimination, of which racial profiling is merely one manifestation, goes unnoticed in the public discourse. Racial profiling primarily affects racialized youth, and in particular, young men living in disadvantaged neighbourhoods. This means that there are at least four intersecting grounds for discrimination: "race", colour, age, sex and social condition. In addition, during the months preceding the public consultation, the Commission concluded that the profiling experienced by racialized youth was only one of the forms of the systemic discrimination practiced in their dealings with public institutions and persons in situations of authority who make decisions that affect them.

As mentioned in the Introduction, the education system and the youth protection system appear to us to be institutional environments in which youth from racialized minorities are at risk of experiencing prejudice that compromises the quality of the public services that they, as citizens, are entitled to expect. Although it is not directly related to racial profiling as defined above, the over-representation of these groups among drop-outs and students in difficulty, and among youngsters reported to and taken into charge by the DYP, forces us, as a society, to take a critical look at these institutions in order to ensure that they do not have systemic discriminatory effects.

In this section, we will begin by defining the concept of systemic discrimination as it is understood and used in this report. We will then discuss certain social issues and explanatory factors that must be taken into account across the board in any strategy that seeks to eliminate racial profiling, and in a broader sense, the systemic discrimination experienced by young Quebecers of racialized minorities in their dealings with the three targeted institutional sectors.

1.1 SYSTEMIC DISCRIMINATION

We speak of direct discrimination when a person is openly and avowedly subject to different treatment based on a prohibited grounds for discrimination. Indirect discrimination refers to the application of a rule, policy or practice that appears to be neutral, but that has potentially harmful effects on members

of groups designated in Section 10 of the Charter.[8] Systemic discrimination involves both direct and indirect discrimination, but is also goes much further. It is based on the dynamic interaction between decisions and attitudes tainted by prejudice, and on organizational models and institutional practices that have harmful effects, whether intended or not, on groups that are protected by the Charter.[9]

In many cases, as the Supreme Court has pointed out, "(systemic) discrimination is then reinforced by the very exclusion of the disadvantaged group, because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of 'natural' forces."[10] In a recent judgment, the Human Rights Tribunal specified that: [translation] "[...] one of the characteristics of systemic discrimination is rather the disproportional exclusionary effect on the members of a group targeted by a prohibited grounds for discrimination that results from a set of practices, policies and attitudes."[11]

Finally, it should be noted that the Commission on systemic racism in the Ontario penal justice system noted in its report:

> "Decision-making inserts racialization into systems where the standards or criteria for making decisions reflect or permit bias against the racialized people. Standards and criteria are part of a system's operating norms, and may be formal and explicit in laws, policies and procedures. Or they may be informal, arising from accepted ways of doing things."[12]

In our view, the three sectors targeted by the consultation must be analyzed from the perspective of systemic discrimination. In the area of public security, racial profiling can assume a systemic nature when certain policies or measures aimed at preventing criminality (such as anti-street gang programs) or socially disruptive behaviour result in making members of racialized groups the subject of disproportionate police scrutiny, and when they are more severely punished by laws and by-laws. In the education system, as in the youth protection system, systemic discrimination can be expressed in policies, measures, evaluation tools, or even organizational structures that have the effect of disproportionately penalizing racialized or immigrant youth.

However, whether it is direct, indirect or systemic, discrimination is generally sustained by stereotypes and prejudices, either conscious or not, that disqualify or stigmatize individuals specifically because of their colour, appearance or membership in an ethnic group, whether it is real or presumed.

1.2 Fighting stereotypes and prejudices

Throughout the consultation, the majority of participants insisted on the fact that prejudices and stereotypes were the backdrop for discrimination, and therefore, that it was important to deconstruct

8 See: *Commission scolaire régionale de Chambly v. Bergevin,* [1994] 2 R.C.S. 525, p. 538-540. It should be noted that, the Supreme Court ruling: *British Columbia (Public Service Employee Relations Commission)* v. BCGSEU, [1999] 3 R.C.S. 3, par. 29, the distinction between direct and indirect discrimination is no longer allowed in the defence of the person or organization accused of discrimination.

9 For more informaiton concerning systemic discrimination, see: Marie-Thérèse Chicha-Pontbriand, *Discrimination systémique, fondement et méthodologie des programmes d'accès à l'égalité à l'emploi*, Cowansville, Éditions Yvon Blais, 1989, p. 85.

10 *Action Travail des Femmes v. Canadian National*, [1987] 1 R.C.S. 1114, 1139 (1987) 8 C.H.R.R. D/4210 (S.C.C.).

11 *Commission des droits de la personne et des droits de la jeunesse v. Gaz métropolitain inc.*, Montréal, No.500-53-000204-030, September 18, 2008 CanLII 24 (TDPQ), par. 28. Permission to appeal granted, December 4, 2008 CanLII 1844 (QCCA); Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, Toronto, Ontario Queen's Printer, 1995, (co-chairs: D. Cole and M. Gittens) p. 51.

12 *Ibid.*, p. 56.

them so that youth from racialized minorities would be able to enjoy the same rights as other citizens in full equality. Although everyone may have prejudices and stereotypes, their effects vary depending on whether the victim belongs to the majority or a racialized minority. In fact, racialized individuals are often excluded from the "us" in the representations of the majority group, and are more likely to be excluded from civic life, or when they do become involved in it, they must overcome additional obstacles in order to gain access to the same opportunities as non-racialized persons.

In all three sectors, one constant became obvious during the consultations: prejudice acts as a driver for the discriminatory interventions or treatment that racialized minorities suffer. Therefore, in all of the cases reported, the persons in a situation of authority were relying on stereotypes and prejudices in evaluating or perceiving the racialized persons, whether consciously or not. According to this logic, regardless of what they say or do, the members of the racialized minorities will be treated or judged as a function of a difference that is always ascribed to them. The effect of this is not only to affect their confidence in the institutions, but also their self-esteem and their identification with Québec society. That is why, from the outset of the consultation procedure, one of the main objectives of the Commission was to increase awareness among the population and the various decision-makers of the social impacts and costs of prejudice and stereotyping.

In addition, although the media was not a sector that was targeted by the consultation, several participants pointed out the non-negligible role of the media in reinforcing stereotypes and prejudices in society. They asserted that the various media contribute significantly to sustaining the stereotypes applied to ethnic and racialized minorities through reductive or distorted portrayals.[13]

> During the consultation, we were told that a film crew had gone to a Montréal school that had a large concentration of students from Black communities to do a news report for TV. The students were very proud to participate, and were hoping to give the public a positive image of their school. They were extremely disappointed when they watched the report, because the perspective chosen by the journalist was to depict their school as a "problem" school, full of violence and inter-ethnic and "inter-racial" violence.
>
> Anecdote reported by Anne-Marie Livingstone, researcher at McGill University.

Everyone decried the fact that, in general, minorities were very under-represented in the media, if not virtually absent. According to many, this absence goes a long way toward perpetuating the erroneous image of a culturally homogeneous Québec in representations of society. Furthermore, according to these same participants, this media invisibility is harmful to youth from ethnic and racialized minorities, to the extent that it deprives them of positive models with whom they can identify with pride.

Other participants noted that the few actors from racialized minorities who are seen on Québec TV series are often confined to stereotypical roles. Journalists were also criticized for not presenting the crimes of racialized persons in the same way as those committed by non-racialized persons. For example, some journalists continue to believe that it is relevant to mention the colour of a criminal when that person belongs to a racialized minority. In addition, although an individual crime committed by a White is presented as an individual pathology, a crime committed by a racialized person is interpreted as being the result of a cultural trait. Several processes, often unconscious, can contribute to reinforcing stereotypes and prejudices through the omission of facts or the choice of words, images

13 The tendency of the media to wrongly reflect the ethno-cultural diversity of society and to reinforce certain stereotypes and prejudices with respect to ethnic and racialized minorities is well documented in: CONSEIL DES RELATIONS INTERCULTURELLES, *A fair representation and treatment of ethno-cultural diversity in media and advertising*, June 2009.

and titles that can be slanted or misleading. As a whole, these stereotypical representations not only have negative effects on racialized persons, but because they are so repetitious, they can ultimately become the reality in the eyes of the public.

That being said, the Commission is aware that in recent years, the Québec media have made efforts to avoid reinforcing prejudices and stereotypes targeting racialized groups as well as to ensure better representativeness and visibility in the media. However, as participants in the consultation have stated, there is still much work to be done on this issue.

1.3 The leadership role of the State in fighting discrimination

There is no question that it is vital to fight prejudices and stereotypes, but it is also important to tackle the discrimination that they bring about in institutions and public spaces. In fact, pursuant to the Charter, the government is obliged to take all necessary measures to create the conditions that allow members of ethnic and racialized minorities to exercise their rights and freedoms in full equality. Such measures must contribute to promoting their inclusion in all spheres of society, specifically through increased employment, better representation in public institutions and positions of power, efforts to lower school drop-out rates, the fight against poverty, etc.

In recent years, the government has introduced a number of measures aimed at promoting the integration of racialized and immigrant groups. In 2008, the government published Diversity: *An added value: Government Policy to promote the participation of all in Québec's development*.[14] This policy included a number of anti-discrimination measures, most of which had already been implemented, by the Commission in particular. It generally stressed measures aimed at promoting the integration of citizens, especially through access to employment. Although praiseworthy, these measures are likely to remain ineffective, because they do not attack the main source of the exclusion of racialized minorities: racism and discrimination in all its forms. That is why, as it has already done so,[15] the Commission recommends that the government adopts a policy that provides for a comprehensive action strategy aimed at fighting racism and discrimination.

The Commission is of the opinion that one of the problems that should be prioritized in an anti-racism and discrimination policy is the under-representation of ethnic and racialized minorities in public institutions. In fact, if it intends to credibly assume a leading role in terms of fighting discrimination and profiling, the Québec government must take concrete steps to ensure that these groups are adequately represented in the public administration.

As it has stated on numerous occasions, the Commission believes that one of the factors that accounts for the under-representation of minorities in government is "the absence of follow-up, evaluation and monitoring procedures at every step of the process of implementing Equal Access Employment Programs (EAEP) in the public service, from setting objectives to implementing corrective measures."[16] Accordingly, given the expertise and methodological tools that it developed for implementing (EAEPs)

14 Ministère de l'Immigration et des Communautés culturelles, *Diversity: An added value: Government Policy to promote the participation of all in Québec's development*, 2008.

15 Commission des droits de la personne et des droits de la jeunesse, *Mémoire à la Commission de la culture de l'Assemblée nationale sur le document de consultation Vers une politique governmentale de lutte contre le racisme et la discrimination* [Brief to the Culture Committee of the National Assembly on the consultation document on a government policy on fighting racism and discrimination], (Cat. 2.120-1.28), 2006.

16 *Ibid.*, p. 23-24.

in public agencies, the Commission again recommends that "Section 92 of the Charter be amended to subject EAEPs in the public service to the Commission's accountability and control procedures."[17] Furthermore, taking into account the particular systemic discrimination that racialized minorities are subjected to, the Commission fails to understand why they do not constitute a specific target group within the framework of affirmative action programs implemented in the public service.[18]

1.4 Fighting poverty

Fighting racism and systemic discrimination cannot be dissociated from fighting poverty, because racialized minorities tend to be over-represented among the most disadvantaged strata of society. For example, according to Statistics Canada, among Quebecers aged 15 and older who have a university degree, the unemployment rate is 3.7% among persons who do not belong to a "visible minority," compared to 11.9% among members of "visible minorities". Although it is shrinking, the gap between these two groups persists when comparing only university graduates born in Canada, with the unemployment rate remaining twice as high among "visible minorities" than among persons not belonging to a "visible minority" (3.1% versus 6%).[19] In terms of average income, even with the same degrees, it remains lower among "visible minorities"[20] Although all racialized persons risk experiencing discrimination or racial profiling, the most disadvantaged among them pay an even higher price.

This link between racialization and poverty is apparent in the three sectors targeted by the consultation. In the context of public safety, authors Bernard and McAll[21] note that racialized youth living in disadvantaged neighbourhoods or areas with a large population of recent immigrants are targeted by police more often than those residing in more affluent neighbourhoods. In his remarks during the consultation, Ronald Boisrond[22] stated:

17 *Ibid.*, p. 24. See sec. 92: The Government must require its departments and agencies whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1) to implement affirmative action programs within such time as it may fix.

Sections 87 to 91 do not apply to the programs contemplated in this section. The programs must, however, be the object of a consultation with the Commission before being implemented.

According to Sections 87 to 91 of the Charter, the Commission oversees the application of Equal Access Employment Programs (EAEP) subject to the the Act respecting equal access to employment in public bodies (R.S.Q., chapter A-2.01, 2001).

18 *Ibid.*, p. 24.

19 Statistics Canada, 2006 Census, Product No. 97-562-XCB2006017 in the Statistics Canada catalogue (Québec /Québec, Code 24).

20 According to Statistics Canada, among university graduates, the average income in Québec among persons who do not belong to a "visible minority" is $67,063, compared to $44,067 among those from "visible minorities". In addition, among immigrants with a university degree, the average income of those who are not part of a "visible minority" is $57,289, compared to $42,780 for those from "visible minorities". Finally, and even more surprising, among Canadian-born children of immigrants who have earned a university degree, the average income is $73,305 among persons who do not belong to a "visible minority", compared to a meagre $45,733 among members of visible minorities. Statistics Canada, Population Census of 2006, Product No. 97-563-XCB2006060 in the Statistics Canada catalogue (Québec/Québec, Code 24).

21 Léonel Bernard and Christopher McAll, "La mauvaise conseillère" [A Bad Advisor], (2010) 3, Revue du CREMIS, p. 12-13, [on line]. http://www.cremis.ca/docs/Revue%20du%20CREMIS%20vol.%203%20no%201%2002-03-16%2072%20dpi.pdf.

22 Ronald Boisrond is a filmmaker and member of a committee promoting cooperation between the SPVM (Montréal Police) and youth from Black minorities (Northern Region).

[Translation]

"The socioeconomic status of parents generally counts for a lot. The vast majority of youth of Haitian origin who appear in court come from underprivileged families."

That being said, even though racialized youth from a disadvantaged background are targeted by police more often, those from more affluent neighbourhoods are by no means spared. As Judge Westmoreland-Traoré commented in a Court of Québec judgment:

"[...] Socio-economic status is a bifurcated indicator. Young black males are the object of racial profiling if they are well to do and driving expensive cars; they are also the object of racial profiling when they are poor."[23]

In the education sector, the disadvantage that disproportionately affects youth from racialized minorities is a factor that cannot be overlooked in responding to the problems of dropping out and lack of success in school among youth from these communities. In addition to experiencing this form of systemic discrimination, racialized students from disadvantaged neighbourhoods and their parents are victims of a double labelling resulting from the prejudices of the various school stakeholders due to their social class and their ethnic origin.

Racialization of poverty is also observed in the youth protection system. It is now clearly established in Québec, as well as in the rest of Canada and the United States, that poverty and disadvantaged circumstances constitute factors that are closely correlated with the probabilities that a child will be reported to the youth protection services for neglect.[24] In Québec, as elsewhere, the indicators for neglect that are recognized by law largely correspond to the indicators of poverty. Therefore, the over-representation of young Blacks in the youth protection system can also be explained, at least in part, by their over-concentration in the most disadvantaged social strata.

With respect to all three sectors, we were told during the consultation that many recent immigrants are forced to hold more than one job in order to provide for their family's needs, although of course they are not the only ones, and that these jobs are often poorly paid and characterized by long work days and exhausting night shifts.

For all of these reasons, the Commission considers that fighting poverty would make a significant contribution to promoting civic participation within Québec society in full equality by members of racialized groups. To this end, as the Commission has pointed out on numerous occasions, it is crucial that the economic and social rights guaranteed by the Québec Charter be fully respected. From this perspective, the Act to combat poverty and social exclusion,[25] which was adopted in 2002, and the resulting government Action Plans constitute essential levers for changing the conditions that perpetuate poverty and social exclusion.

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23 R. v. Campbell, 2005 CanLII 2337 (QC C.Q.), par. 81. [on line]. http://www.canlii.org/en/qc/qccq/doc/2005/2005canlii2337/2005canlii2337.html; See also the case of Joël de Bellefeuille, Municipal Court, Longueuil.

24 See for example: Esther BELONY, "La prise en charge des enfants de l'immigration haïtienne par la Direction de la protection de la jeunesse: une analyse comparative" [The taking into care of children of Haitian immigrants by the Direction of Youth Protection], master's thesis, Université du Québec, INRS-UCS, 2007; Melissa JONSON-REID, Brett DRAKE and Patricia L. KOHL, "Is the Overrepresentation of the Poor in Child Welfare Caseload Due to Bias or Need?," *Children and Youth Services Review*, No. 3, 2009, p. 422-427, p. 426; Joy DUVA and Sania METZEGER, "Addressing Poverty as a Major Risk Factor in Child Neglect: Promising Policy and Practice," *Protecting Children*, vol. 25, No. 1, 2010, pp. 63-74.

25 R.S.Q., c. L-7, 2002.

The Commission noted[26] that the most recent Government Action Plan for solidarity and social inclusion (2010-2015)[27] contained a number of beneficial measures, but it was disappointed in the fact that they were not sufficient.[28] It also pointed out that the government Action Plan "provides only a few concrete measures designed to ensure the employability of the most vulnerable persons in our society: recent immigrants, racialized minorities, Aboriginal people, handicapped persons, youth, etc."[29] In fact, not only do these groups experience alarming rates of unemployment, but those who are employed are all too often concentrated in unskilled and precarious jobs.

1.5 Human resources

Throughout the consultation, we were told that the most exemplary human resource management models in terms of fighting racial profiling were those in which senior management had demonstrated leadership in creating an institutional environment sensitive to diversity and free from discrimination, because they were convinced of the necessity of doing so. In this respect, the two avenues of intervention that are considered to be the highest priority involve hiring and training practices. More specifically, participants criticized the absence of diversity among the personnel in each of the sectors, along with the lack of intercultural and antiracism training in all job sectors concerned.

Pursuant to the Act respecting Equal Access to Employment in Public Bodies,[30] the application of which is monitored by the Commission, municipal police departments, youth centres and school boards, in particular, are required to implement an EAEP. The objective of these programs is to ensure that there is fair representation of certain specific groups among the personnel of agencies that are covered by the law, including ethnic and "visible" minorities. Legally, the members of the target groups must have representation within these agencies that is prorated according to their weight among those who are qualified to occupy the position to be filled in a given recruitment sector.[31] According to available data, very few of the public agencies concerned by our consultation achieve their targets in terms of representation by ethnic and visible minorities.[32] Furthermore, the objectives themselves are rather low, given the shortage of minority candidates who are qualified to work in certain sectors, such as police departments and educational institutions for example.

EAEPs were initially and primarily designed to allow members of minorities to exercise their right to equality in access to employment without discrimination. However, they can also play another equally important role. By helping to ensure diversity of personnel, EAEPs also facilitate the civic integration

26 Commission des droits de la personne et des droits de la jeunesse, *Commentaires sur le Plan d'action gouvernementl pour la solidarité et l'inclusion sociale*, (Cat. 2.170.4), 2010.

27 Ministère de l'emploi et de la solidarité sociale, *Government Action Plan for solidarity and social inclusion* (2010-2015), Québec, 2010.

28 Commission des droits de la personne et des droits de la jeunesse, op.cit note 27, p.2.

29 *Ibid.*

30 Op. cit., note 17.

31 *Ibid.*, sec. 1 to 9.

32 For example, on December 29, 2007, the Montréal Police Force (SPVM) had on its staff 6.5% permanent officers from visible minorities while their objective was 8%. Moreover, the gap between the actual presence of the target groups and the targets for their representation is much greater for more senior positions. Service de police de la ville de Montréal, *Bilan 2007 en accès à l'égalité en emploi*, 2007, p. 7. As for school boards, according to our internal data, they very rarely achieve their visible minority representation targets, which vary by education level, job category and, in the case of teachers, subjects to be taught. As for youth centres, it is still too soon to know if they have achieved their objectives since the Commission has not yet completed its analyses of under-representation in this sector.

of the ethnic minorities served by the institutions. On the one hand, because they are continually exposed to cultural differences, employees who work in diversified work places must confront their own prejudices and stereotypes on a daily basis. In this respect, it is worth noting that, for the majority of participants, the excessive cultural homogeneity of the personnel of police forces, schools and youth centres acts as an obstacle to taking diversity into account in terms of the services offered. On the other hand, participants frequently pointed to the importance of allowing minority youth to identify with the personnel of these institutions in order for them to be able to develop a feeling of belonging in Québec society.

For all of these reasons, it is essential for each institution affected by the consultation to ensure that its personnel adequately reflect the ethnocultural diversity of the clientele that they serve by applying appropriate measures to meet or even exceed the representation targets that are established by law.

Although a diversified workforce can help personnel to become aware of and open to differences, it is important for all employees to acquire antiracism and intercultural skills, which is why antiracism and intercultural training must receive priority importance in terms of basic and ongoing education in all three sectors. It would appear that, when they complete school, social workers, school personnel and police officers are poorly prepared to deal with the reality of clienteles from origins different from their own. In fact, the basic education of these professionals tends to neglect or even ignore issues related to discrimination and intercultural relations. Programs that deal with these issues are few and far between, and those that do merely skim the surface within the context of courses addressing more general topics, while shrugging off the issues of racism, discrimination and social power structures between groups. The Commission is of the opinion that antiracism and intercultural education should not be part of courses designed exclusively for that purpose, but should be integrated across the board, throughout the entire program.

Furthermore, learning intercultural and antiracism competencies is an on-going process that must continue within the various professional communities, even after the basic education has been completed. In this respect, a number of participants consider that continuing education represents one of the solutions to racial profiling and discrimination. In addition, this education must not only be provided for employees, but also for managers and the executives who are ultimately responsible for ensuring that intercultural and antiracism training that is adapted to each setting is accessible to all job categories and all organizational levels. Finally, the training must be ongoing and updated on a regular basis.

In light of the foregoing, the Commission considers that it is vital for antiracism and intercultural approaches to be integrated, in a complementary manner, into both basic and continuing education.

1.6 Data collection

If there is one measure that appears to be met with a broad consensus among the groups and organizations involved in fighting racial profiling and discrimination, it is data collection. Many people pointed out that data collection is an essential condition for better defining the forms and the scope of "ethnoracial" discrimination in each of the institutional environments targeted by the consultation. In fact, by correlating information pertaining to the presumed colour, "race," and ethnic origin of individuals who have been the subject of an intervention, we can track the paths of racialized youth in institutional settings, and thereby obtain a comprehensive portrait of the situation. This approach would enable managers and executives to detect possible discriminatory biases occurring at various points during their interventions. Moreover, without access to these data, it is impossible for managers

to take stock of the results of measures that have been applied to prevent and counteract systemic discrimination within their institution based on periodic reporting.

Of course, the data collection method must be adapted to the reality and the problems specific to each institutional sector, but there are certain common issues and shortcomings that are characteristic of all three sectors. First, it is clear that no data is collected in certain institutions, whereas data collection in others is not systematic. In addition, there is quite often no uniformity in terms of the indicators used to measure the "colour" or "ethnic origin" variable of the clientele in a single sector, or even within a single institution.

That being said, the Commission is aware of the concerns of some participants with respect to any type of data collection related to colour or ethnic origin. It was pointed out that such practices entail risks for ethnic and racialized minorities. In particular, the fear exists that, if the data were to reveal an over-representation of racialized youth among people with police records, dropouts or youth under the care of the DYP, it would contribute to stigmatizing these youth even more. Although these risks are real, the Commission is of the opinion that they can be reduced if "sensitive" data is placed in context and interpreted in the light of relevant explanatory variables, such as systemic discrimination and poverty, preferably by an independent authority. On the other hand, even though the concerns that have been mentioned are legitimate, data collection is a "necessary evil", because it is absolutely essential to form a comprehensive portrait of the differential treatment and inequalities experienced by racialized youth in order to be able to conduct a targeted and effective attack on systemic discrimination.

THE COMMISSION RECOMMENDS:

- **that the government adopt a policy aimed at fighting racism and discrimination that provides a plan of action for preventing and eliminating racial profiling and its consequences;**
- **that each institution targeted by this consultation ensure that its staff reflects the ethnocultural diversity of the clientele that it serves by applying appropriate measures to meet or even exceed the representation targets established in ;**
- **that the government take the necessary measures to increase the representation of ethnic and racialized minorities in the public administration, and concurrently, that section 92 of the Charter be amended to the effect that Equal Access Employment Programs in the public service are subject to the Commission's reporting and monitoring procedures;**
- **that the ministère de l'Éducation, du Loisir et du Sport (MELS), in collaboration with the university faculties concerned, ensure that the degree programs for each sector concerned contain antiracism and intercultural training, and that the students have acquired intercultural competency upon completion of their studies;**
- **that government departments and institutions concerned adopt standard methods and indicators for collecting data pertaining to the ethnic origin and colour of their clienteles, with a view to detecting possible discriminatory biases;**
- **that the government provide more measures to combat poverty hat specifically target the groups at the greatest risk of living below the poverty level, which include recent immigrants, Aboriginals, racialized groups and single mothers, and that it adopt tools to measure the effectiveness of such measures.**

2. THE PUBLIC SECURITY SECTOR

2.1 General context and issues

Police officers and law enforcement agencies play a fundamental role in preventing criminality and protecting the public. However, in their actions, they must be careful to avoid racial profiling, not to be confused with criminal profiling, which remains an essential activity within the context of many police investigations.

In order to distinguish racial profiling from criminal profiling, the Commission has adopted the explanation given by the Ontario Human Rights Commission:

> "[...] racial profiling differs from criminal profiling, which isn't based on stereotypes but rather relies on actual behaviour or on information about suspected activity by someone who meets the description of a specific individual. In other words, criminal profiling is not the same as racial profiling since the former is based on objective evidence of wrongful behaviour, while racial profiling is based on stereotypical assumptions."[33]

Throughout the public consultation process, a number of participants reported abusive and harassing police scrutiny of racialized persons, as well as disproportionate deployment of police resources in the neighbourhoods that they frequent.

Recent studies[34] have demonstrated that these actions are closer to racial profiling than criminal profiling.

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33 Ontario Human Rights Commission, op.cit., p. 10.

34 For the Québec studies, see: Emerson Douyon, "L'impact du 11 septembre sur les communautés ethnoculturelles au Canada," in *Terrorisme, droit et démocratie. Comment le Canada est-il changé après le 11 septembre?*, Institut canadien de l'administration et de la justice, Éditions Thémis, 2002, 193-197; L. Bernard and C. McAll, op.cit, note 22, p. 7-14; Léonel Bernard et Christopher McAll, *Jeunes, police et système de justice - La surreprésentation des jeunes Noirs montréalais*, présentation de résultats de recherche, Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS), [on line]. www.cremis.ca. Centre affilié universitaire CSSS Jeanne-Mance, Montréal 19 mars 2009. [on line]. http://www.mbetv.com/docs/Jeunes_et_la_police_2009_03_31.pdf; Mathieu Charest, Ph.D., *Mécontentement populaire et pratiques d'interpellations du SPVM depuis 2005: Doit-on garder le cap après la tempête*?, [Popular discontent and interrogation practices of the SPVM since 2005: Should the course be changed after the storm] Draft, March 2009, Internal SPVM study (Charest, Report-1), SPVM, [online]. http://www.spvm.qc.ca/upload/documentations/Mecontentement_populaire_et_pratiques_dinterpellations.pdf; Mathieu Charest, Ph.D., *Mécontentement populaire et pratiques d'interpellation du SPVM depuis 2005: doit-on garder le cap après la tempête?* Mise à jour des données (2001-2008), Document de travail, 30 août 2010 (Charest, Report-2, SPVM, [on line]. http://spvm.qc.ca/upload/documentations/Mecontentement_populaire_mise_a_jour_2008.pdf; Conseil interculturel de Montréal, *Avis sur la problématique du profilage racial à Montréal*, octobre 2006. [on line].http://ville.montreal.qc.ca/pls/portal/docs/page/conseil_interc_fr/media/documents/Avis_profilage_racial.pdf; Note: Under the provisions of the Charte de la Ville de Montréal, the Conseil interculturel de la Ville de Montréal (CIM) is responsible for advising the city council and the executive committee. See also the following audiovisual documents:*Tolérance Zéro*, by Michka Saäl, National Film Board, 2004, *La couleur du temps*, by Ronald Boisrond, produced by Danic Champoux, 2008.

In this respect, racial profiling in the context of public security is the most well-known form of this phenomenon.[35] In this case, it generally occurs as part of interventions by police, law enforcement officers[36] or private security services,[37] which target youth from racialized minorities for reasons related to security or crime prevention.

Racial profiling undermines confidence in government institutions, both among racialized groups and the population in general. Several people from racialized communities who participated in the consultation affirmed that they do not enjoy the same freedoms as the rest of the population, including the freedom to circulate, to have fun or to get together with other racialized youth. They feel as if they are on the margin of society, and are under scrutiny and targeted when they occupy public spaces. Several participants found it especially revolting that, despite the fact that they were born in Canada, they were excluded and felt like undesirables in their own society.

> [Translation] "[...] in procedural justice, four conditions are required so that individual has the feeling of being treated fairly by thoses who hold a legitimite authority:
>
> to have an opportunity to explain;
>
> to be convince of the neutrality and the objectivity of those who make decisions;
>
> to be treated with dignity;
>
> to have confidence in the motives of those who make the decision.
>
> If these four conditions are not met, the decision's outcome, positive or negative, will have little influence on the overall satisfaction of a citizen questioned by police. Perforce, racial profiling violates these four conditions."
>
> Maurice Chalom[38]

Several of the examples that were mentioned were experienced in Montréal, not because the phenomenon is exclusive to Montréal, but rather because the majority of racialized persons live in the city. Therefore, the rare exhaustive Québec studies on racial profiling that were cited above pertained to Montréal. On the other hand, the Commission wishes to point out that, throughout the consultation process, a number of persons living in the suburbs of Montréal, such as Laval and Longueuil, or in other large cities, such as Québec City and Sherbrooke, reported experiences that constituted or could have been associated to racial profiling.

Given the ethnocultural diversity of its clientele, the Service de police de la Ville de Montréal (SPVM) cannot ignore the problems faced by persons from racialized, ethnocultural or immigrant minorities. A recently published SPVM document says:

> [Translation] "It is reasonable to believe that most citizens will enter into contact with the police at some time in their life. Some will call on the police for various reasons, while others will attract their attention. For most, this contact will be without serious consequences, and will not result in any aggressiveness. However, others will have the feeling that they were targeted or treated unfairly, and may even go so far as to feel threatened and frustrated. Those who believe that they

35 This is probably due to the fact that this form of profiling is the most widely documented, as well as the most flagrant in terms of observations.

36 Public transit system officers in buses and subways in major cities.

37 Stores, bars, buildings that are open to the public or that offer services to the public, etc.

38 Maurice CHALOM "La pratique du profilage déshonore la profession policière," (janvier-mars 2011) vol LXIV *Revue internationale de criminologie et de police technique et scientifique*, p. 83-100, p.89.

have been stopped because of visible characteristics, such as the colour of their skin, the way they dress, or their age, or for behaviour that is not illegal, may even feel that their rights have been violated."[39]

Further on, it states:

> [Translation] "The fact that some individuals experience injustice and feel that their rights have been violated may, in itself, trigger a series of reactions, including violence. That is why, by definition, if a high proportion of a specific ethnic group believes that the agencies that apply the law employ differential measures with them, a serious problem exists, and must be taken into account."[40]

In the sections that follows, the Commission will present the issues and problems that require urgent attention in order to prevent and eradicate racial profiling as it applies to public security, based on studies, briefs submitted and testimony received during the consultation. In Section 2.2, we will examine the issue of targeted scrutiny of racialized minorities and its consequences, which include abusive questioning and arrest, as well as over-judiciarization. In Section 2.3, we will take a critical look at the effectiveness of the remedies that are currently available to assist citizens in exercising their rights when they believe that they have been victims of racial profiling in their dealings with the police and agencies tasked with duties related to order and security.

2.2 TARGETED SCRUTINY OF RACIALIZED MINORITIES

Racialized minorities are the subject of targeted and disproportionate scrutiny by police forces. Such racial profiling exercised within the context of public safety is sustained by the idea that citizens who belong to certain racialized groups do not have equal weight in society, and therefore, are not treated with the same respect or the same degree of tolerance.

This prospective approach to reducing criminality, which consists of seeing correlations between specific criminal activities and certain group-based traits, has been increasingly recognized as ineffective.[41] It leads to generalized dissatisfaction with and distrust of public institutions among racialized and vulnerable groups.

> "All the young Latinos who were hanging in the park or in the vicinity were photographed, whether or not they had links with a street gang."
>
> A Montreal youth of Latin American origin

Unequal and discriminatory application of the law within a context of public security gives a false picture of reality. As a result, individuals who belong to a "profiled" community have a greater risk of being stopped, arrested, charged and exposed to different and unequal treatment during every step of the judicial process.[42] It should also be remembered that individuals from racialized communities

39 Anne CHAMANDY, «La police et les citoyens," in Michelle CÔTÉ, Ph.D. (dir.), *Lecture de l'environnement du service de police de la Ville de Montréal,* 2nd quarter 2010, SPVM, p. 49.

40 *Ibid.*, p. 51.

41 "[Prospective] criminal profiling uses probabilistic analysis in order to identify potential suspects and target them for surveillance." HARCOURT, B. E., "The shaping of chance: Actuarial models and criminal profiling at the turn of the twenty-first century," *The University of Chicago Law Review*, No. 70, 2003, p. 109, cited in: Jimmy BOURQUE, Ph.D., Stefanie LEBLANC, M.A., Anouk UTZSCHNEIDER, M.Sc., Christopher WRIGHT, M.A., *The Effectiveness of Profiling from a National Security Perspective*, Canadian Human Rights Commission and Canadian Race Relations Foundation, p. 6.

42 A study by the NATIONAL COUNCIL OF WELFARE (*Justice and the Poor*, Ottawa, spring 2000) reveals that contrary to popular belief, the poor are not necessarily more likely to engage in criminal activities than those better off. The crime rate attributed do the poor would be largely due to police practices.

are entitled to adequate protection from security officers when the situation requires it or when they themselves are victims of a criminal act.

In this section, the Commission will address its recommendations to the government, public institutions and police departments with respect to modifying or eliminating organizational practices, laws, by-laws and policies that in one way or another create or reinforce systemic racial profiling.

2.2.1 THE FIGHT AGAINST CRIMINALITY AND STREET GANGS

In an article on organized crime and street gangs,[43] criminologist Mathieu Charest explains:

> [Translation] "Fighting street gangs has been one of the priority activities of the SPVM since the mid 2000s. [...] The name "street gangs" refers to a rather broad range of juvenile delinquents and criminal adults from such gangs who are really criminal entrepreneurs. While the patrols and mobile squads seek to limit incidents involving groups of youngsters, the specialized investigations are more focused on the less visible segment of larger scale traffickers." (underlining added)

In his report[44] commissioned by the SPVM following the Montréal-Nord riots in the wake of the death of Fredy Villanueva, who was killed by a police officer in August 2008, Charest noted the significant over-representation of young Blacks among individuals stopped during police actions throughout the Island of Montréal.[45]

This over-representation is not unrelated to the creation of special squads to fight street gangs, such as the "Avance" (2005-2008) and "Éclipse" (since June 2008)[46] squads.

Charest posits the following hypothesis:

> [Translation] "Why did interrogations of Blacks increase drastically in 2006-2007 in some sensitive neighbourhoods and why didn't they start to increase gradually starting in 2003-2004 (the year when the fight against street gangs became an SPVM priority)? Our main hypothesis is that the deployment of special flying squads, relieved from responding to calls and dedicated to fighting street gangs in Montréal, is largely responsible for the observed increase."[47]

The Charest report highlighted "certain of the harmful consequences of the fight against street gangs and the repercussions of special squads like Avance and Éclipse on the volume and quality of ID checks of members of ethnic groups."[48]

It notes that, between 2001 and 2007, the frequency of ID checks increased significantly in the city of Montréal[49] (60% in Montréal, 125% in Montréal-Nord and 91% in Saint-Michel).[50] In addition, it turns

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43 Mathieu CHAREST, "*Le crime organisé et les gangs de rue,*" [Organized Crime and Street Gangs], in Michelle CÔTÉ, Ph.D. (dir.), *Lecture de l'environnement du service de police de la Ville de Montréal*, 2nd Quarter 2010, SPVM, p. 130-131.

44 M. CHAREST, Report 1, op.cit., note 35.

45 For his report, Mathieu CHAREST consulted the register of SPVM interview records, which contain information about the ethnic origin of those questioned. The SPVM also has a register of 10,000 names associated with the fight against street gangs.

46 Flying squads not assigned to a specific police station were tasked with supporting the action plans of various units of the SVPM in the field, based on the needs identified by these units. Four sectors were identified by the ministère de la Justice et de la Sécurité publique: fighting street gangs; fighting illegal drugs; cybercrime; and localized criminal phenomena.

47 M. CHAREST, Report 1, op.cit., note 35, p. 8.

48 *Ibid.*, p. 5.

49 *Ibid.*, p. 1.

50 M. CHAREST, Report-1, op.cit., note 35, p. 5: "There was no noticeable increase in ID checks in the borough of Rivière-des-Prairies (after an incident between Avance officers and a group of youth from the RDP project, the Station 45 officers agreed to supervise all group interventions and ask for support from Avance when needed)."

out that these observed increases are mainly attributable to stopping persons of "Black descent."[51]

Much like other security services, the SPVM invokes the rate of criminality in order to justify its action in certain districts where there is a greater concentration of racialized minorities.

But is that the reality? Does the over-representation of youth from racialized communities in police interventions really reflect the criminality in which these youth are involved?

To those who believe that the criminality in certain districts of Montréal dictates police action, the Commission notes that the police data analyzed by Charest indicate that the proportion of crimes attributable to persons in the Black community is somewhere between 10% and 20%, depending on the offence involved, whereas they represent approximately 40% of those stopped and questioned.

In fact, an SPVM report[52] indicates that "Criminality in Montréal-Nord [district associated with street gang groups] follows the trend observed since 2004 in the other sectors of the city of Montréal, namely a reduction or levelling in all types of crimes [...]."[53]

In addition, criminality associated with street gang activities represents only 1.6% of criminal acts reported in 2009.[54] Therefore, this criminal manifestation is marginal compared to all of the other criminal activities recorded in the territory served by the SPVM.[55]

Moreover, in an article published in *Le Devoir*, Brian Myles revealed that, in 2006, the SPVM estimated that "500 individuals belonged to gangs, counting peripheral members and 'wannabes'. The hard core consisted of some 50 hardened criminals."[56] It is then suprising to learn, in the 2009[57] Charest report, that the SPVM has a register containing 10,000 names of individuals supposedly linked to street gangs. The fight against street gangs seems to provoke disproportionate police activity, not to mention newspaper headlines.

In the news article "Les gangs de rue, pas si dangereux," quoted above[58] Jacques Robinette, Assistant Director of the SPVM Special Investigations acknowledged that: "In fact, the gravest problem facing Montreal from the police's perspective, is crime against individuals. And street gang members committed only 4 % of those crimes."

In order to legitimize police actions, Mr. Robinette explains:

> [Translation] "Street gangs, that happens in the field, i a bar, in the metro, on the street while domestic violence (for example) happens inside a home... What worries citizens, is what he or she sees, People believe that the street gang phenomenon is taking lots, and lots more importance, and maybe a bit more importance than what we see in the field, he said. Of course, when when it represents only 2, 3 or 4 % of the criminal activity but occupies 60 or 70 % of the air time in the media, people have the impression that street gangs are proliferating. And it's not necessarily the case."[59]

51 *Ibid.*, p. 3, Whereas for all other groups (Whites, Hispanics, other ethnic minorities), the number has remained relatively stable.

52 SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, Résumé des réalisations - Contexte d'intervention-Pré et post événements, août 2008; SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, *Dossier: Montréal-Nord, Réalisations Service de police de la Ville de Montréal*, October 2010.

53 M. CHAREST, Report 1, op.cit., note 34, p. 14.

54 "Les gangs de rue, pas si dangereux," *LeDevoir.com*, February 17, 2010.

55 *Ibid.*

56 Brian MYLES, "Gangs de rue - 10 000 noms dans la banque du SPVM", *Le Devoir*, October 1st 2010.

57 M. CHAREST, Report 1, op.cit., note 34, p. 2.

58 B. MYLES, op.cit., note 56.

59 B. Myles, op.cit. 56.

Based on the definition of racial profiling adopted by the Commission, it seems clear that the significant over-representation of Blacks among those stopped and questioned in Montréal in recent years confirms the perception that racial profiling is being applied to them. Therefore, the first Charest report, states that, in light of data compiled by the police, the "results indicate that about 40% of the Blacks questioned are not linked (either closely or remotely) to street gangs and have no record of recent arrests, and their being questioned did not result in either an arrest or ticket [...] the ID checks produce very few arrests or offences (5%)."[60]

Furthermore, the report states that in the Saint-Michel borough of the city of Montreal, "two thirds of the Blacks were questioned for reasons that can be described as "weak" (routine inquiry, person of interest)... (as was the case for only one third of Whites)." [61]

Therefore, not only are Blacks more closely scrutinized and more frequently questioned than Whites, but it happens to them for more trivial reasons.

Charest explains: "The ID checks most likely to arouse popular discontent and the accusations of ethnic profiling are those in which the people questioned have no criminal record and are not linked in any way to a gang, and which result in neither an arrest nor a ticket. Questioning that satisfies none of these three criteria is difficult to justify."[62]

In his second report, Charest states that the overall number of Blacks stopped and questioned on the whole of the Island of Montréal stabilized after 2007, but nevertheless noted that police actions in Montréal-Nord,[63] where the Éclipse squad is active,[64] intensified after 2008.

Researchers Léonel Bernard and Christopher McAll[65] concentrated on the over-representation of young Blacks (between 12 and 18 years old) in the application of the Youth Criminal Justice Act.[66] They also observe that Blacks are more often arrested and prosecuted throughout the territory of the Island of Montréal. Young Blacks are also more often associated with street gangs. In 11% of cases involving the arrests of young Blacks, the police indicated that they suspected membership in a gang, whereas there was no such suspicion reported in the records of any of the White youth who were arrested.[67]

These authors comment that, "while in 2006-2007, Blacks [all age groups combined] were 2.5 times more likely to be arrested on the Island of Montréal than Whites, they were 4.2 times more likely to be stopped and questioned. These rates are at their highest levels (7 to 11 times more likely to be stopped)

60 M. CHAREST, Report 1, op.cit., note 34, p. 1.

61 M. CHAREST, Report 2, op.cit., note 34, p. 6.

62 M. CHAREST, Report 1, op.cit., note 34, p. 6.

63 M. CHAREST, Report 2, op.cit., note 34, p. 3-4: "The gradual slowing of actions in Saint-Michel and downtown was accompanied by a shift in the intensity of activities toward Montréal-Nord. After successive increases in 2006 and 2007 (questioning of Blacks +126% since 2001), there was a third year of growth, with the number of ID checks (known) increasing by more than 50% (in 2008). The peaks in this rise occurred in the months preceding the riot. The increase in surveillance, which in 2006 and 2007 affected Whites as well, now involved only Blacks."

64 In an article entitled "*Les Noirs davantage interpellés après le déploiement de l'escouade Éclipse,*" [Blacks questioned more after deployment of the Eclipse Squad], published on October 18, 2010 in *La Presse*, Catherine Handfield reported that "Various parties in Saint-Michel had protested during the deployment of Éclipse, which they felt jeopardized breaking the trust between the youth and the neighbourhood police. Over several years, Commander Fady Dagher and his team had established a culture of "concertation" between the various players in the neighbourhood, in order to bring the police closer to their community." Quoting the Mayor of the Saint-Michel borough, the journalist wrote "In short, we made it clear to Éclipse that we had a different dynamic and that we were able to deal with our youth, said Anie Samson. The message got through inside."

65 L. BERNARD and C. MCALL, op.cit., note 21.

66 L.C. 2002, c. 1.

67 L. BERNARD and C. MCALL, op.cit., note 21, p. 13.

in neighbourhoods where there are fewer Black residents."[68]

These studies sounded an alarm. Upon taking office in the fall of 2010, the new chief of the SPVM, Marc Parent, openly questioned the methods used by the Éclipse squad. During a news conference on September 23, 2010, Mr. Parent explained that the Éclipse squad "conveyed a negative image of the SPVM to youth."

"Using a very broad approach like that, where they intervene in a very repressive way, it's sure to increase tension with some youth, with different groups. We have reached a point where that type of strategy has to be reconsidered."[69]

Not only does the approach of the specialized squads require reconsideration, but that used by all of those involved in providing public security also requires review.

In a report that was commissioned by the SPVM after the Montréal-Nord riots, psychologist Martin Courcy explains:

> "Youth complain of daily harassment, and say that they are asked too often to identify themselves."[70]

Later he adds:

> "[...] Furthermore, very frequent checking of IDs is questionable, especially if the police officer calls a young person by his first name. [...] Such a continuous and constant practice generates tension. It can really drive a person crazy."[71]
>
> [...]
>
> "I spent several hours walking along Pascal and Pierre streets. No police officer returned my greeting. The street workers who helped me told me that the police never say hello to them. Several times a day, the police drive through the parking lots of two small shopping centres at slow speed. I have never seen them say hello to the youth. They make their presence felt. I don't know if it's a provocation, but the attitude of the police, mostly unhealthy, doesn't let them get close to the youth. On the contrary, it is likely to marginalize these kids even more, and even drive them into the street gangs. They don't feel that the police respect them. How can they respect the police?
>
> [...]
>
> [They see] their condition with respect to the police as pre-determined. They will always be harassed by the police because of their poverty and the colour of their skin, and talking about what the police do won't help them, because nothing will change. Except one day the pot will boil over [...]".[72]

"In the early 80s, there were no Black inmates at the Bordeaux prison. Today, they represent about 40% of the population of that prison."

Ronald Boisrond, in his film *La couleur du temps*.[73]

68 Regardless of whether these neighbourhoods are more "affluent" (Outremont and Plateau Mont-Royal) or more "disadvantaged" (Hochelaga-Maisonneuve). See: L. Bernard and C. McCall, op.cit., note 22, p. 8.

69 Source: Radio-Canada, September 24, 2010.

70 Martin Courcy, *Rapport d'intervention à Montréal-Nord*, p. 7.

71 *Ibid.*, p. 8.

72 *Ibid.*, p. 9-10.

73 Boisrond, op.cit., note 34.

THE COMMISSION RECOMMENDS:

- **that the cities and their police departments review their policies for deploying police by district in order to prevent discrimination and racial profiling;**
- **that the cities and their police departments review their policies for fighting crime and street gangs in order to reflect the discriminatory biases that are inherent in the policies or in their application;**
- **that the cities and their police departments take measures to ensure that the results of the application of their policies for fighting crime and street gangs are known to the public.**

2.2.2 THE FIGHT AGAINST INCIVILITY AND THE DISCRETIONARY APPLICATION OF MUNICIPAL BY-LAWS

Several participants in the consultation indicated that the over-representation of racialized persons among those questioned by the police is probably due to the arbitrary and disproportionate application of certain by-laws or administrative guidelines.

The police enjoy significant discretionary power in the application of by-laws and in their role as guardians of public order. In addition, a number of by-laws that are written in vague terms are subject to interpretations that vary according to the context.

It should be noted that, in 2003, the SPVM adopted a policy to "combat incivility", which reads as follows:

> "Incivility is still a major concern for citizens, and often more of a source of insecurity than crime. Nuisances like noise, vandalism and homelessness are always among the concerns expressed by elected officials and in surveys, and more than half of Montréalers consider that there are problems with vandalism, graffiti and dirtiness in their neighbourhood."[74]

Accordingly, Section 1 of the By-law respecting peace and public order75 reads as follows:

> "No person may impede or obstruct pedestrian and vehicular traffic by standing still, prowling or loitering on public thoroughfares and places, and by refusing to move on, by order of a peace officer, without valid cause."

There is no need to specify that the application of policies and by-laws of this kind is likely to target marginalized[76] or racialized persons to a greater extent.

In its brief submitted during the consultation, the Ligue des droits et libertés indicated:

> "In this context of 'crime prevention' and 'fighting incivility', the police are likely to consider that any young person or any 'unusual' person, appearing innocent, is a delinquent without knowing it, especially if he is identified as belonging to an ethnocultural minority."[77]

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74 SERVICE DE POLICE DE LA VILLE DE MONTRÉAL, *Optimisation de la police de quartier*, October 10, 2003, p. 9 and 10, [on line]. http://www.spvm.qc.ca/upload/documentations/Rapport_optimisation_2003_10_10.pdf.

75 R.R.V.M., c. P-1.

76 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *La judiciarisation des personnes itinérantes à Montréal : un profilage social,* Me Christine Campbell and Paul Eid, (Cat. 2.120-8.61), 2009, [on line]. http://www2.cdpdj.qc.ca/en/publications/Documents/itinerance_avis.pdf.

77 Brief presented by the Ligue des droits et libertés, p. 14.

Among the other SPVM by-laws, one could cite the By-law respecting cleanliness and the protection of public property and urban furniture[78], which reads as follows in section 20:

> "No person may use street furniture for a purpose other than the one for which it is intended, damage it or alter it in any way."

Several witnesses mentioned the issuing of tickets or harassing actions by police in the application of these provisions. One example involved tickets issued to young Blacks who were seated on a block of concrete near a public housing area in the Saint-Michel borough, on the grounds that it was the improper use of street furniture.

Other situations pertaining the application of the by-laws of Montréal's public transit system, the Société de transport de Montréal (STM)[79], were reported. According to participants, police assigned to the application of STM by-laws seem to apply a principle of zero tolerance with respect to racialized youth. Several people criticized the discretionary power exercised by police in this context, citing as an example the by-law that provides that: "In or on an immovable or rolling stock, it is prohibited for anyone to: disturb or disrupt the free circulation of persons, in particular by standing still, lurking, loitering [...]."[80]

A number of participants in the consultation emphasized that young Blacks who are in the vicinity of metro stations say that they are harassed by the police, who ask them to disperse as soon as two or more people are together and do not move (e.g.: while waiting for a friend or a less crowded train).

Some participants reported to us that youth from racialized groups who are entitled to reduced fares[81] may be subjected to ID checks more frequently than young Whites.

With respect to the actions of private security guards, we heard testimony of disproportionate scrutiny, discrimination, harassment, and denial of access to shopping centres, stores, bars, etc., especially for Blacks and Latin Americans. They are largely targeted because they are linked to poor people or potential offenders.[82]

> "The event I'll relate didn't happen just once. It's frequent in a number of bars in the suburbs. At the start of our 2009 session, a group of friends, women and men aged between 20 and 23, went to a bar in Brossard. The doorman refused to let the men in because Blacks had been involved in a fight the previous week. Why is it that we label Black men as being violent? Why does a whole group have to pay for the fault of others? "
>
> A Black student from the South Shore

All of these acts constitute racial profiling according to the second paragraph of the definition adopted by the Commission.[83] In fact, in a context marked by prejudice, the application of the by-laws and rules of practices occurs in a way that the most marginal or stigmatized persons, and in particular racialized persons, pay the greater price.[84]

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78 R.R.V.M., c. P-12.2.

79 By-law prescribing standards of security and conduct to be observed by passengers in the rolling stock and immovable operated by or for the STM *(Act respecting public transit authorities,* R.S.Q., c. S-30.01, sec. 144).

80 *Ibid.*, sec. 4.

81 With proof of school attendance.

82 See decision: *Radek v. Henderson Development (Canada) Ltd*, (No. 3) 2005 BCHRT 302; COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 77; NATIONAL WELFARE COUNCIL, op.cit. note 43.

83 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 7, p. 18.

84 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 7.

THE COMMISSION RECOMMENDS:

- **that each city and its police department review the police policies and practices with respect to the application of municipal by-laws in order to detect and eliminate any discriminatory impacts on racialized persons;**
- **that the City of Montréal and the SPVM review the police policies and practices with respect to fighting incivility in order to detect and eliminate any discriminatory impacts on racialized persons.**

2.2.3 UNDER-PROTECTION OF RACIALIZED PERSONS BY THE POLICE

The fact that racialized persons are perceived as potential criminals may partially explain the testimony of some participants from racialized groups in the consultation, who indicated that they feel less protected by the police, and believe that they receive less attention from the police when they are victims of a crime.

> "If a Black commits a crime against a Black, that seems less serious than if the victim were White."
>
> Spokesperson for the Québec Black Coalition

Bernard and McAll[85] make the following observation:

> "How to explain the virtual absence of young Blacks as victims of crimes committed by Whites? Either aggression always moves in the same direction (which would be surprising) or young Blacks are too afraid of the police to file complaints against White aggressors, or again, the police take the complaints filed by young Blacks against young Whites less seriously. The possibility that the fear of young Blacks (and their families) or their mistrust of the police and the justice system helps explain the apparent lack of complaints made by young Black victims against White attackers is suggested by the fact that young Blacks are more likely to use a lawyer than young Whites (18.3% versus 9.9%)."[86]

In its presentation, the Québec Black Coalition maintained that, when the police intervene in a dispute between a racialized person and a White, too often it is the racialized person who is assumed to be at fault.

In addition, racialized women experience a special situation. One woman participant noted that, not only do they hesitate to call the police when they are victims of domestic violence, but when they do, they are not always taken seriously, and feel that they are less protected by the police.[87]

In this respect, we can only join with the Fédération des femmes du Québec in deploring the lack of studies on the impact of racial profiling or police inaction (which is another form of racial discrimination) on racialized women.

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85 L. BERNARD and C. MCALL, op.cit., note 21, p. 10.

86 *Ibid.*, furthermore, the authors also point out: "Such an explanation could in itself explain a portion of the over-representation of young Blacks among the youth arrested and prosecuted, given that the fact of not complaining against young Whites would necessarily reduce their arrest rates and increase the over-representation of young Blacks."

87 See: CANADIAN COUNCIL FOR SOCIAL DEVELOPMENT, *Nowhere to Turn? Responding to partner violence against immigrant and visible minority women*, Ekuwa SMITH, March 2004.

2.2.4 RECOGNITION AND PROHIBITION OF RACIAL PROFILING IN LAWS AND POLICIES

Like many of the participants, institutions and groups,[88] the Barreau du Québec deplores the fact that the distinction between criminal and racial profiling has not been clearly established.

For the purposes of discussion, it is useful to repeat the Commission's definition of racial profiling, which was stated in the Introduction, to the extent that it has become increasingly accepted among organizations fighting racism as well as in jurisprudence:

> "Racial profiling is any action taken by one or more people in authority with respect to a person or group of persons, for reasons of safety, security or public order, that is based on actual or presumed membership in a group defined by race, colour, ethnic or national origin or religion, without factual grounds or reasonable suspicion, that results in the person or group being exposed to differential treatment or scrutiny.
>
> Racial profiling includes any action by a person in a situation of authority who applies a measure in a disproportionate way to certain segments of the population on the basis, in particular, of their racial, ethnic, national or religious background, whether actual or presumed."[89]

Several other definitions have been adopted in Québec.[90] They are somewhat similar to the first paragraph of the one adopted by the Commission. However, the second paragraph of our definition is unique. It specifically takes into account the systemic nature of the phenomenon, and points out that, as soon as an action is seen to be applied disproportionately to one category of people, there should be some consideration of whether it is racial profiling.

The Commission wishes to point out that, among the current definitions, the one adopted by the SPVM is problematic in several respects. It reads as follows:

> "Racial and illegitimate profiling is defined as being any action initiated by persons in authority with respect to a person or group of persons, for reasons of security or protection of the public and based essentially on factors such as race, ethnic origin, colour, religion, language, social status, age, sex, disability, sexual orientation or political convictions, in order to expose the individual to an examination or differential treatment when there are no real grounds or reasonable suspicions for doing so."[91] (underlining added)

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88 Including: briefs by CRARR, Ligue des droits et libertés and the Québec Black Coalition.

89 This definition was used recently in the judgment of the Human Rights Tribunal, *Commission des droits de la personne et des droits de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Center)* 2010 QCTDP 16 CanLII. [on line]. http://www.canlii.org/fr/qc/qctdp/doc/2010/2010qctdp16/2010qctdp16.html; also in the Court of Québec judgment: *Valkov v. Société de transport de Montréal*, 2007 QCCQ 5677.

90 For example, the "task force on racial profiling" co-chaired by the ministère des Communautés culturelles and the ministère de la Sécurité publique proposed the following definition: "Racial profiling is any action taken by one or more persons in authority with respect to a person or a group of persons, for reasons of safety, security or protection of the public, based on factors such as race, colour, ethnic or national origin or religion, without real grounds or reasonable suspicion, and whose effect is to expose the person to differential examination or treatment." We would point out that the Commission has made a substantial contribution to the development of this definition, which was presented to the National Assembly on March 23, 2004 by Minister Courchesne to mark March 21st, International Day for the Elimination of Racial Discrimination. There is also the definition proposed by the CONSEIL INTERCULTUREL DE MONTRÉAL DE LA VILLE DE MONTRÉAL op. cit. note 35. "Racial profiling would be: any action initiated by persons in authority with respect to a person or group of persons for reasons of security or protection of the public that is essentially based on factors like race, ethnic origin, color, clothing and behaviour, in order to expose the individual to differential examination or treatment when there are no real grounds or reasonable suspicions for doing so." [on line]. http://ville.Montréal.qc.ca/pls/portal/docs/page/conseil_interc_fr/media/documents/Avis_profilage_racial.pdf.

91 *Racial and illegitimate profiling*, [on line]. http://www.spvm.qc.ca/en/service/1_5_2_2_profilage-racial.asp.

As the participants noted, the terms "illegitimate" and "essentially" introduce a degree of ambiguity, and suggest that racial profiling can be a legitimate practice if it is part of a procedure to fight crime.[92]

A decision by the Police Ethics Committee of January 12, 2011 agrees with this logic. The Committee rejected the SPVM definition, which it found to be too restrictive.[93]

The Committee explained:

> "The Montréal Police Service (SPVM), in its intervention – racial and illegitimate profiling – No. Pr. 259-1, in effect since January 24 2006, adds a specific character to the intervention by persons in authority in a definition similar to the preceding one:
>
> [...] any action initiated [...] that is essentially based [...] on such factors as race [...].
>
> Section 5 of the Code does not describe the prohibition in such a limited way. Here is its wording:
>
> A police officer must act in such a manner as to preserve the confidence and consideration that his duties require.
>
> A police officer must not:
>
> (1) [...]
>
> (2) [...]
>
> (3) [...]
>
> (4) commit acts [...] based on race, colour, [...].
>
> Is it necessary to specify that a police department directive may not replace the law? The Committee does not feel that it is bound by the SPVM policy, and if Officer Gauthier were a member, the Committee would express the same opinion.
>
> The use of racial profiling by a peace officer as a motive for intervening with a person of colour is not generally the subject of an admission. When it is, the proof of the existence presents a clear challenge for the party that claims it."[94] (underlining added)

The Commission is of the opinion that only profiling that is carried out as part of a police investigation, without involving stereotypes, is legally acceptable.

Given the ambiguity that still persists with respect to the extent of protection against racial profiling, there is reason to take steps so that the concept is defined and officially recognized as harmful and discriminatory behaviour.[95]

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92 See: COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *Proving racial profiling: perspectives for civil cases*, Michèle Turenne, (Cat. 2.120-1.26.1), 2006, p. 48, [on line]. http://www2.cdpdj.qc.ca/publications/Documents/proving_racial_profiling.pdf; Michèle TURENNE, *Le profilage racial : une atteinte au droit à l'égalité. Mise en contexte - Fondements - Perspectives pour un recours*, Commission des droits de la personne et des droits de la jeunesse, (Cat. 2.500.132), p. 74. See briefs from CRARR, la Ligue des droits et libertés, and the Barreau du Québec.

93 *Le commissaire à la déontologie policière c. L'agent Philippe Gauthier*, dossier No. C-2009-3581-2 (08-1557-2), 12 janvier 2011, Commission de déontologie policière, [on line]. http://www.deontologie-policiere.gouv.qc.ca/fileadmin/deonto/documents/decisions/C-2009-3581-2-f.pdf.

94 *Ibid.*, par. 62 to 65.

95 Which is the opinion of a number of participants in the consultation and of the CONSEIL INTERCULTUREL DE MONTRÉAL as well, op.cit., note 34, p. 23.

THE COMMISSION RECOMMENDS:

- **that the government officially recognize a definition of racial profiling[96], and take steps to amend the Charter of Human Rights and Freedoms to include discriminatory profiling as a prohibited act. This amendment could be inserted after section 10.1 of the Charter, which protects against discriminatory harassment;**
- **that racial profiling be prohibited in the Police Act and in the Code of Ethics of Police Officers of Québec;**
- **that the government take steps to amend the Act respecting Private Security to include in it prohibited actions linked to racial profiling;**
- **that the cities and administrators of public transit systems provide policies prohibiting racial profiling linked to verifying the payment of fares and the movement of its clientele.**

2.2.5 DATA COLLECTION

Incidents of racial profiling are not only anecdotal. Although they express a systemic problem, there have been few studies in this respect. There is an urgent need to collect exhaustive data in order to document the situation[97] not only with respect to the actions of peace officers, but also throughout the judicial system. In fact, the disproportionate surveillance of youth from racialized communities and of Aboriginals will necessary result in an over-representation of these individuals all the way to the prison system.[98]

Bernard and McAll state in their study:

> " [...] youth identified by police as "Blacks" are subject to more surveillance by police and security guards than youth identified as "Whites." This "over-surveillance" could be enough to account for up to 58% of the over-representation of young Blacks. Each new arrest contains the risk of a new charge, resulting in a worsening of the criminal record (if the charge is proved) and the probability of a longer sentence and more restrictive conditions than the previous time."[99]

In its brief, which was presented during the consultation, the Barreau du Québec shared this view: "[racial profiling in the judicial system] seems to be partially responsible for the over-representation of certain racialized groups in the prison system, especially Blacks and Aboriginals [...]."[100]

Moreover, independently of the profiling practiced by law enforcement officers, which feeds the over-judicialization of racialized persons, there are reasons to question the decisions made during every

96 In the Charter, or failing that, in a law. The definition adopted by the Commission and recently enshrined in a judgment by the Human Rights Tribunal could serve as a model: *Commission des droits de la personne et des droits de la jeunesse v. Bombardier inc. (Bombardier Aerospace Training Center)*, 2010 QCTDP 16 (CanLII), [on line]. http://www.canlii.org/fr/qc/qctdp/doc/2010/2010qctdp16/2010qctdp16.html.

97 In Ontario, an investigation on this scale demonstrated the extent of the systemic racism throughout the justice system. See: COMMISSION ON SYSTEMIC RACISM IN THE ONTARIO CRIMINAL JUSTICE SYSTEM, op. cit., note 12.

98 Data already confirm an over-representation of Aboriginals and Blacks in the federal penal system. In 2008-2009, Aboriginals represented 17.15 of the carceral population while they only represented 3.8% of the population. Blacks represented 7.4% of the carceral population while they only represented 2.5% of the population, according to CORRECTIONAL SERVICES OF CANADA, Public Safety Canada, December 2009.

99 L. BERNARD and C. MCALL, op.cit. note 21, p. 12.

100 Barreau du Québec, brief p.9, repeated its observation presented in: BARREAU DU QUÉBEC, *Mémoire sur le document de consultation "Pour la pleine participation des Québécoises et des Québécois des communautés culturelles - vers une politique governmentale de lutte contre le racisme et la discrimination."* August 2006, p. 25.

step of the judicial process that may have discriminatory impacts (in the laying of charges, crimininal convictions, sentencing, conditions for release, etc.).

An example that may already illustrate one form of intersectional discrimination[101] in the judicial system is the over-representation of racialized youth from disadvantaged communities. Certain participants, including the CRARR in particular, pointed out the fact that, in the criminal courts, "there are growing numbers of allegations to the effect that a number of lawyers [paid by legal aid] too often persuade their clients [...] to plead guilty in order to reduce the time invested in their defence and increase the number of cases [...] assigned to them."[102]

In this regard, the Commission is concerned by the absence of data, or at least public data, pertaining to the representation of youth from minorities in rehabilitation centres who have been sentenced pursuant to the Youth Criminal Justice Act. It is important to remember that, in 1994, the Commission de protection des droits de la jeunesse published a study that demonstrated that young offenders from racialized minorities were over-represented in rehabilitation centres, in particular because they had double the chance of others of being the subject of judicial measures (as opposed to "alternative measures").[103] In addition, the study did not reveal any significant intergroup gap with respect to the likelihood of being taken into institutional care in protection cases. These data, which date back more than fifteen years, must be updated. Are young offenders from racialized minorities still over-represented in rehabilitation centres? By the same token, are DYPs less likely to propose extrajudicial sanctions when racialized young offenders are involved, or do they give greater preference to judicial prosecution?

For the Barreau du Québec, "data must [...] be collected at every step of the system so that it becomes possible to determine whether racialized persons are being treated fairly by it. [...] Although there are risks of the wrong use of the data that could increase the stigmatization of racialized persons, and even of discrimination for them, these risks can be offset by effective data collection methods and a communications strategy for their disclosure. Data collection is essential in a multicultural society [...]."[104]

The only known case of systematic data collection for analysis of the extent and process of racial profiling within a police department was carried out by the Kingston, Ontario Police Department. This data collection, which was limited in time, made it possible to not only detect certain discriminatory biases in police actions (decisions to intervene, questioning, detention, arrests, etc.)[105], but also, over the medium term, to provide objective arguments for increasing awareness among police with respect to the contra-productive effects of racial profiling in fighting crime.[106]

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101 It involves the confluence of several discrimination factors.

102 CRARR brief, p. 21.

103 COMMISSION DE PROTECTION DES DROITS DE LA JEUNESSE, *La clientèle multiethnique des centres de réadaptation pour les jeunes en difficulté*, 1994.

104 Barreau du Québec brief, p. 52.

105 Inquiry conducted between October 1, 2003 and September 30, 2004.
In this study, the Kingston police analyzed the frequency and nature of interventions (in public spaces and on public roads) by peace officers involving persons according to their ethnicity. According to the analyses, a Black man (men are stopped much more often than women) aged between 15 and 24 years old has three times the risk of being stopped by the police than a White person from the same age group, given their representation in the city. However, author Scot Wortley, who conducted the study, noted that other studies must be done to determine possible links between the rate of stopping and deviant behaviour by ethnicity.

106 Kingston's former police chief, W.-J. Closs, made a very eloquent statement on this matter during the consultation.

In the article *La police et les citoyens* (Police and Citizens), published by the SPVM, the author states:[107]

> "The debate on the issue of profiling is very lively. Does profiling really exist? Who does it target and who does the targeting? How to prevent these interventions or how to demystify the role of officers in application of the law? These questions, among several others, can become secondary when looking at the simple fact that certain groups or individuals perceive that they are victims of racial profiling.
>
> [...]
>
> Although it is still impossible to empirically demonstrate the scale of racial profiling, the subject is increasingly topical. In fact, to demonstrate whether the practice of racial profiling exists, anecdotes or personal experiences alone are not taken seriously and remain inadequate. In order to prove it statistically, the official data should first of all be requested from the police departments."

To summarize, data collected within a context of systematic data collection will make it possible to objectively document the situation of racial profiling in order to make the necessary corrections with a view to ensuring the protection of citizens' rights. Another benefit that will result from this process is a self-critical attitude among officers while in action. In fact, W.-J. Closs[108], the former Kingston police chief, explained that a number of recalcitrant officers began to question some of their actions as a result of this project.

THE COMMISSION RECOMMENDS:

- **that the municipal police departments and the Sûreté du Québec systematically collect and publish data[109] related to the presumed racial identity of individuals[110] during police actions in order to document the phenomenon and take the appropriate measures; and that these same procedures be established by public transit companies with respect to the actions of their employees;**
- **that the ministère de la Justice and the ministère de la Sécurité publique take the necessary steps to document the path of racialized minorities throughout the judicial system (laying of charges, trial, sentencing, parole, etc.);**
- **that youth centres produce and publish data pertaining to the representation of racialized youth in rehabilitation centres who were sentenced pursuant to the Youth Criminal Justice Act, and pertaining to the types of measures (judicial or other) that the DYP is inclined to propose for these youth.**

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107 A. CHAMANDY, op.cit., note 39, p. 50.

108 There are examples of systematic data collection to counter racial profiling in several American states, see: AMERICAN CIVIL LIBERTY UNION (ACLU), *Traffic Stop Consent Searches Across the State of Illinois and by the Illinois State Police*, July 2008. The Kingston police force is the only police force in Canada to have implemented a data collection pilot project. See: WORTLEY, S., *Bias Free Policing: The Kingston Data Collection Project*, - Study conducted from October 1st 2003 to September 30, 2004 [on line]. http://www.cantraining.org/BTC/docs/CanadianReferences/Bias%20Free%20Policing%20-%20Wortley.pdf; *Profiling Minorities: A Study of Stop-and-Search Practices in Paris*, [on line]. http://www.soros.org/initiatives/justice/focus/equality_citizenship/articles_publications/publications/search_20090630/search_20090630.Web.pdf; RAMIREZ, D., J. MCDEVITT and FARRELL, *A Resource Guide on Racial Profiling Data Collection Systems – Promising Practices and Lessons Learned*, Northeastern University, 2000, [on line]. http://www.ncjrs.gov/pdffiles1/bja/184768.pdf; HARRIS, D., "Driving While Black : Racial Profiling on our Nation's Highways," An ACLU Special Report, June 1999, [on line]. http://www.aclu.org/racial-justice/driving-while-black-racial-profiling-our-nations-highways.

109 Grounds linked to race, age, ethnicity or religion, etc.

110 In accordance with the Charter. The methodology applicable to such a collection could be based on the methodology applied pursuant to the *Act respecting Equal Access to Employment in Public Bodies* (R.S.Q., c. A-2.01) to offset systemic discrimination in employment, op.cit.17.

2.2.6 SUPERVISION OF POLICE ACTIONS, PARTNERSHIPS AND ACCOUNTABILITY

Most participants in the consultation have called for better supervision of police, in particular in terms of avoiding mistakes of a discriminatory nature. For them, racial profiling takes place in an institutional context in which political authorities must show leadership in order to counter its manifestations.

The supervision and feedback model for officers in the field should be revised. For example, the supervisors at the SPVM are members of the same union as the police who report to them. Many see this model as not guaranteeing impartiality with respect to decisions related to police exhibiting inappropriate behaviour. A procedure that would ensure greater neutrality in the regular supervision process ought to be developed.

Police inaction or ineffectiveness in certain situations where racialized minorities need police protection is a problem that was raised on occasion during the Commission's consultation. While as mentioned, some dubious actions by the police are based "fear"[111] generated by the public, the consultation also revealed that racialized individuals also complain that they are not adequately protected by the police.

Police forces, and especially those in large cities, should apply strategies of getting closer to citizens, both in order to protect them and to eliminate and prevent crime. Among the measures introduced by the SPVM, we would like to emphasize the community police model. In the SPVM study[112] that was cited earlier, the author states the following:

> "The police consider that, in a context of high immigration, it is important to reinforce the links with the community in order to contribute to the harmonious co-existence of all citizens. Likewise, two components of the community police model are based on the concept of community relations. The first is to establish and maintain harmonious links with the community and its components. The second involves the establishment and maintenance of strategic partnerships."[113]

Among the strategic partnerships established with community players that have had some positive repercussions in connection with the problem of racial profiling on the Island of Montréal, there is the experience of the Saint-Michel and Rivière-des-Prairies districts.

The rate at which young Blacks were questioned in Rivière-des-Prairies was clearly lower than that observed in Saint-Michel and Montréal-Nord when the Avance group was deployed. After the introduction of community police in Saint-Michel, pointless questioning of young Blacks by police seems to have diminished.

In the brief that entitled: *Modèle partenarial d'intervention et d'actions contre le profilage racial* [Partnership model for intervention and actions against racial profiling], which was tabled during the Commission's consultation, Harry Delva, Coordinator of youth projects at the Maison d'Haïti in Montréal, explained:

> "It is acknowledged that many of the concerns expressed and used to justify the existence of racial profiling in Québec and in Montréal, [...] are due to misunderstanding certain realities of the cultural communities. Such misunderstanding often results in the holders of "discretionary" power making extreme decisions on the basis of misunderstood facts or actions.
>
> [...]

111 On this issue, see: L. BERNARD and MCALL, op.cit., note 21.

112 A. CHAMANDY, op.cit., note 39, p. 54-55.

113 On this issue, see: SERVICE DES COMMUNICATIONS ET DES RELATIONS AVEC LES CITOYENS, *Politique pour un environnement paisible et sécuritaire*, Ville de Montréal, 2008.

> Concretely, this axis of the approach is based on a local partnership [the Saint-Michel district of Montréal, in this case] among various levels of community action, public intervention, school sector and other local institutions (private and para-private) around a common issue. These stakeholders, who are knowledgeable about local problems, converge their actions in order to introduce a common vision of the viability of the sector or of the district.
>
> [...] Today, because of this partnership model of intervention, waves of police intervention are very rare in this district, and the perceptions that youth and police have of each other have evolved along the lines of an informed understanding."[114]

Several participants asked that steps be taken to integrate persons from the communities concerned into the decision-making process with respect to the deployment of security forces. They also propose that the police forces and private security agencies regularly analyze their actions in order to detect and prevent prohibited behaviour and risky practices from an antiracism perspective.

THE COMMISSION RECOMMENDS:

- **that the ministère de la Sécurité publique and the cities implement an annual accountability process to document actions taken against racial profiling by police services;**
- **that police departments introduce measures that ensure greater impartiality in the supervision of their officers, in particular by involving police managers or commanders in the process;**
- **that police departments issue instructions to detect and track signs of racial profiling among their officers;**
- **that the cities establish anti-profiling watch committees consisting of members of civil society and city council members; and more specifically, that the City of Montréal make public reports by the Commission de la sécurité publique;[115]**
- **that the cities draw upon certain successful partnership initiatives between police and the community (such as in Rivière-des-Prairies and Saint-Michel) in order to develop alternative methods for preventing and controlling crime.**

2.2.7 HUMAN RESOURCES TRAINING AND MANAGEMENT

In his report[116] to the SPVM, psychologist Martin Courcy writes:

> "The youth say that police officers make remarks that they would never dare say in any other district of the city of Montréal, for example:

114 Brief tabled, p. 3 to 7.

115 Although the SPVM serves the residents of the whole Island of Montréal, it reports to the central city and is accountable to the Agglomeration Council which is made up of representatives of Montréal and the 15 other cities on the Island. As a result, the SPVM collaborates with a standing committee consisting of elected municipal officials and a representative of the Québec government, called the Commission de la sécurité publique (CSP). The CSP has the power to make recommendations to the Executive Committee and the Agglomeration Council.

116 M. COURCY, op.cit., note 70.

[...]

Dirty immigrant, go back to your country, dirty N... [...] If you don't like it, go back to your own country."[117]

In this respect, the CRARR noted the following:

"If, in case after case and year after year, it appears clear that the behaviour of police and public servants is marked or motivated by discriminatory prejudices, how is it still possible that, in college courses and training preparatory to the École nationale de police du Québec, diversity and human rights training is still marginal and non-integrated?" [118]

Thus, in the news article: *Les gangs de rue, pas si dangereux,* previously quoted, Jacques Robinette[119] states:

"We give tools to the police officers [...] We don't claim to train 4,500 police experts. For that matter, the experts themselves don't agree on what constitutes a street gang."[120]

In fact, even when training is given, as in the cégeps and at the École nationale de police du Québec and to existing officers, little has been done to assess the acquisition of the expected antiracism competencies.[121]

On this subject, the Barreau du Québec pointed out:

"the training should stress the perverse effects of racial profiling, and in particular the fact:

[...]

- that its impact on criminality is negligible in relation to the costs it entails; [122]

[...]."

- that it generates a distrust on the part of racialized persons toward the police, which has the effect of reducing the effectiveness of police interventions to prevent and detect crimes and misdemeanours;

- that it reduces the effectiveness of police forces that depend on public cooperation for reporting offences and providing descriptions of suspects and giving testimony;

[....]."

According to participants, in order to combat prejudices, peace officers and all those involved in the court system must be made aware of the issues related to the phenomenon of racial profiling. With respect to the court system, the Barreau du Québec particularly noted that the lawyers and judges must be trained in issues related to using racial profiling as a defence during trials.[123]

117 *Ibid.*, p. 4.

118 CRARR brief, p. 14.

119 Assistant-director, SPVM Chief of Special Investigations.

120 Op.cit. note 57.

121 See Maurice CHALOM, "Pour une justice juste" (automne 2008) 1:3, *Revue du CREMIS*; Maurice CHALOM et Luce LÉONARD, L., *Insécurité, police de proximité et gouvernance locale*, Éditions L'Harmattan, 2000. The SPVM recently adopted a tool allowing the detection of risky behaviour (of a discriminatory or anti-social nature), in police officers when they are being hired. However, it is too soon to measure the expected results.

122 ONTARIO HUMAN RIGHTS COMMISSION, op.cit., note 6.

123 Barreau du Québec brief, p. 40.

Furthermore, most of the participants indicated that diversity of the work force at all levels is another way to counteract discrimination and racial profiling. It is vital that police officers and private security agents, as well as those who work in the court system, be representative of the communities that they serve.[124] Not only is such representation desirable in terms of meeting the goals of equal employment, but it is also a condition for breaking down stereotypes and prejudices among personnel and in the decision-making process.

Finally, one of Mathieu Charest's recommandations in his document *Mécontentement populaire et pratiques d'interpellation du SVPM depuis 2005*, with regard to the need to establish partnerships with community groups to fight stereotypes and to improve police interventions should be noted:

> "[the] leadership, based on the idea that [Rivière-des-Prairies] police officers have a better understanding of the issues and the specificities of the district, has allowed to avoid the explosion of ID checks observed in Montréal-Nord and Saint-Michel, and to preserve the (often fragile) relationship between police and cultural communities."[125]

THE COMMISSION RECOMMENDS:

- **that police training programs and the École nationale de police du Québec provide anti-racism training[126] that includes a formal evaluation of what has been learned by future police officers; and that the cities[127] and the ministère de la Sécurité publique establish a similar process for police officers;**
- **that the government amend the Private Security Act in order to have it include similar training adapted to the private security context;**
- **that the École nationale de police du Québec, the cities and the ministère de la Sécurité publique take steps to promote diversity training and activities within racialized communities, both as part the curriculum of officers in training and once they are employed;**
- **that cities and police departments take steps to ensure that their practices in recruiting, promoting and evaluating police take into account intercultural competencies;[128]**
- **that the ministère de la Justice and the ministère de la Sécurité publique take steps to ensure that all participants in the legal system and administrative tribunals (judges, lawyers, crown prosecutors, parole officers, prison guards, etc.) be recruited, trained, evaluated and promoted in accordance with their intercultural competencies;**

124 See briefs submitted by the CRARR, the Barreau du Québec, the Black Coalition of Québec, the Ligue des droits et libertés and Ronald Boisrond.

125 M. CHAREST, Report 1, op.cit., note 34, p. 10.

126 Already, further to the work of the taskforce on racial profiling established by the ministère des Communautés culturelles in 2003, basic training about the concept of "racial profiling" has been introduced in the cégep program and at the École Nationale de police du Québec. But neither the content nor what was learned is evaluated.

127 The SPVM has already arranged a number of training sessions for its members and developed sensitization material. However, this does not seem to be adequate to ensure that at risk police officers acquire new ways of being and acting.

128 The SPVM recently adopted a tool allowing the detection of risky behaviour (of a discriminatory or anti-social nature), in police officers when they are being hired. However, it is too soon to measure the expected results.

- **that the Director of Criminal and Penal Prosecutions adopt rules of practice that make it possible to detect actions involving racial profiling in the cases submitted to him;**
- **that the administrators of police departments work with community partners[129] to fight effectively against crime, with respect for the rights of citizens, and that the government and the municipalities allocate adequate funding for this purpose in their budgets.**

2.3 Recourse for citizens

Throughout the Commission's consultation, participants from both racialized groups and from the majority communicated their lack of confidence in the legitimacy and efficacy of police action. Many indicated that society as a whole loses when certain citizens feel that they are subjected to unjustified behaviour by those who ought to guarantee the peaceful exercise of their civil and democratic rights. Such comments, which challenge the credibility and efficacy of the existing system, are not new. A number of reports, investigative committees and task forces have examined several aspects of police services, and issues of public confidence and system efficacy have always been at the core of the debate.[130]

Many remedies are available to guarantee the rights and freedoms of citizens, including the right to be protected against discrimination and racial profiling.

Therefore, every incident resulting from a failure or omission with respect to a duty or a standard of conduct provided by the Code of Ethics of Québec Police Officers[131], which was created pursuant to the

129 See: experiences in Rivière-des-Prairies, Ville LaSalle, Saint-Michel.

130 Québec Ombudsman, The Québec Investigative Procedure for Incidents involving Police Officers (Ministerial policy of ministère de la Sécurité publique) for a Credible, Transparent, and Impartial Process that Inspires Confidence and Respect, February 2010, [on line]. http://www.protecteurducitoyen.qc.ca/fileadmin/medias/pdf/rapports_speciaux/2010-02-16_Rapport_police_final.pdf. In Québec, a "task force on racial profiling", co-chaired by the ministère de l'Immigration et des Communautés culturelles and the ministère de la Sécurité publique and urged by representatives of the community network, debated issues and proposed actions to the government between 2003 and 2007.

See also these studies published by the Commission des droits de la personne (available in French only): Enquête sur les allégations de discrimination dans l'industrie du taxi à Montréal, 1984; Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques (Rapport Bellemare), Enquête sur les relations entre les corps policiers et les minorités visibles et ethniques: rapport final du Comité d'enquête à la Commission des droits de la personne du Québec, 1988; Mise en application des recommandations du Rapport d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques, 1989.See also: Québec (Province) Bureau du coroner (Rapport Yarosky), Rapport du coroner suite à une enquête sur le décès de Monsieur Marcellus François survenu le 18 juillet 1991, à l'Hôpital général de Montréal résultant de blessures subies lors d'une opération policière du Service de police de la Communauté urbaine de Montréal, 1992; Groupe de travail sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal (Rapport Corbo), *Une occasion d'avancer: rapport du Groupe de travail du ministre de la Sécurité publique du Québec sur les relations entre les communautés noires et le Service de police de la Communauté urbaine de Montréal*, 1992; Albert Malouf, *Rapport de l'inspection de l'administration du Service de police de la Communauté urbaine de Montréal, de ses activités et celles de ses membres*, ministère de la Sécurité publique, 1994.

131 *Code of Ethics of Québec Police Officers,* c. P-13.1, r. 1, (Code of ethics).

See: Sec. 4: Any failure or omission concerning a duty or a standard of conduct provided for by this Code constitutes a derogatory act hereunder and may result in the imposition of a penalty under the Police Act (R.S.Q., c. P-13.1).

Sec. 5: A police officer must act in such a manner as to preserve the confidence and consideration that his duties require.

A police officer must not:

(1) use obscene, blasphemous or abusive language;

Police Act[132], constitutes a derogatory act, and may result in the imposition of a penalty.

When the action that is objected to contains a discriminatory aspect[133], a Charter remedy is provided against officers involved in such events and their employer (private security agency or police department) awarding the victim material, moral and punitive damages. Such actions may be filed in the Human Rights Tribunal by the Commission, which was given a special role by the Charter.[134]

Victims or their families may also seek judicial remedies involving civil liability against officers involved in such events and their employer (private security agency or police department) in order to obtain compensation[135] for the harm incurred.

Furthermore, if the incident involved, resulted in death or severe injuries caused by police officers, there are other investigative procedures available.

In this context, the Act respecting the Determination of the Causes and Circumstances of Death[136] provides for an investigation by the coroner[137] whenever there is an accidental death. Two approaches are used in fulfilling this responsibility, namely an "investigation", which is the private process by which the coroner collects the information necessary to perform his duties, or a "public inquest", in which relevant information and facts are presented to the coroner during public hearings.[138] In both cases, the coroner's report is always made public.

The goal of the coroner's investigation is not to determine the personal or criminal liability, but to examine the factors involved and propose remedies to prevent such situations from recurring[139], where appropriate.

(2) fail or refuse to produce official identification when any person asks him to do so;

(3) fail to carry prescribed identification in his direct relations with the public;

(4) commit acts or use injurious language based on race, colour, sex, sexual orientation, religion, political convictions, language, age, social condition, civil status, pregnancy, ethnic or national origin, a handicap or a means to compensate for a handicap;

(5) be disrespectful or impolite towards any person.

132 *Police Act*, R.S,Q., c. P-13.1, sec.127.

133 This recourse is civil in nature. Thus, private security guards, who are not subject to the Code of ethics may be sued pursuant to the Charter, sections 10, 49.

134 Charter, sec. 71, 111.

135 Civil Code of Québec, art. 1053, 1057.

136 R.S.Q., c. R-0.2.

137 *Ibid.*, sec. 2 The coroner's function is to determine, by means of an investigation or, as the case may be, an inquest,

(1) the identity of the deceased person;

(2) the date and place of death;

(3) the probable causes of death, that is, the disease, pathological condition, trauma or intoxications having caused, led to or contributed to the death;

(4) the circumstances of death.

3. If pertinent, the coroner may also, during an investigation or an inquest, make any recommendation directed towards better protection of human life.

138 [on line]. http://www.coroner.gouv.qc.ca/index.php?id=investigation_enquete.

139 Act respecting the Determination of the Causes and Circumstances of Death, op.cit., note 136, art. 4: In no case may a coroner conducting an investigation or an inquest make any finding of civil liability or criminal responsibility of a person.

Finally, pursuant to a Ministerial Policy[140] applicable to deaths or serious injuries occurring as part of a police action or during detention, the ministère de la Sécurité publique must designate a police department that is not the one where the officers involved work to investigate their actions.[141]

Once the investigation is completed, the designated police department sends its report and recommendations to the Director of Criminal and Penal Prosecutions in order to determine whether criminal charges should be filed against the police officers and the department involved.

In this section, the Commission will examine the investigation system instituted pursuant to the Code of Ethics and the Ministerial Policy applicable to police incidents involving serious injury or death. Finally, the system provided for pursuant to the Charter for which the Commission is responsible is discussed in the section that addresses the Commission's commitments.

2.3.1 The Police Ethics Commissioner's complaint system

The police play a vital role in a society where the primacy of law is considered to be a fundamental value. They provide one of the most important public services for society by maintaining public order and preventing and fighting crime. For this purpose, police officers have exceptional powers in the exercise of their duties.

In order to exercise these powers adequately, police must have the trust of the public. "That means that the population is reassured with respect to the fact that order and security will be maintained with professionalism and in conditions that respect the rights and freedoms of each individual. It also contains the promise of greater police efficacy, because the collaboration of the public is built on this basis and is essential for both preventing and controlling crime."[142]

It should be remembered that the police ethics system is based on the application of the Code of Ethics of Québec Police Officers[143], which is governed by the Police Act.[144] On the Police Ethics Commissioner website, it is explained that "the system, governed by the Police Act, is meant to increase the protection of citizens by ensuring respect for individual rights and freedoms. Moreover, it aims to develop, within police services, high standards of services and conscientiousness."[145]

Two independent civil authorities make up this system: the Police Ethics Commissioner, who receives and examines the complaints[146], and the Police Ethics Committee, which is a specialized administrative tribunal.[147]

Based on the information gathered in the complaints, the Commissioner decides to send the file to

140 Powers derived from the Police Act, sec. 289, 304.

141 The investigation conducted pursuant to the Ministerial Policy is essentially a criminal investigation.

142 Québec Ombudsman, op.cit., note 131, p. 1.

143 *Ibid,* note 130.

144 *Ibid*, note 131.

145 [on line] http://www.deontologie-policiere.gouv.qc.ca/index.php?id=74&L=1.

146 It is important to emphasize that the Commissioner may not submit the case on his own. He can only act when there is a complaint from a person, a request for investigation from the ministre de la Sécurité publique, or a final decision from a Canadian court declaring a police officer guilty of a criminal offence which also constitutes a breach of the Code of ethics. [on line] http://www.deontologie-policiere.gouv.qc.ca/index.php?id=12&L=1. See: Police Act, sec. 128 to 193.

147 See: Police Act, sec.194 to 255.11.

conciliation, calls for an investigation[148] or closes the file[149], as appropriate. Furthermore, if it appears that a criminal offence may have been committed, the case is immediately sent to an appropriate police force for the purpose of a criminal investigation, if this has not already occurred.

Upon completion of an investigation, if the allegations of the complainant are found to have merit[150], the file is transferred to the Police Ethics Committee, which holds a public hearing in order to determine whether the police officer has committed an act derogatory to the Code of Ethics, and if so, to impose a penalty. The Committee's decisions may be appealed in the Court of Québec.

The ministère de la Sécurité publique mandated Claude Corbo to examine the workings of the police ethics system, almost six years after it came into force.

In his report, Mr. Corbo[151] reaffirmed the essential criteria for guaranteeing an effective ethical system. We repeat them here for the purpose of clarifying the issues:

"To be satisfactory, an ethics system must demonstrate the following characteristics:

148 See: Police Act:

Sec. 148: Every complaint relating to an event that in the opinion of the Commissioner involves the public interest, in particular, events in which death or serious bodily harm has occurred, situations potentially injurious to the public's confidence in police officers, criminal offences, repeat offences or other serious matters, shall be dealt with under his authority. Complaints which are clearly frivolous or vexatious and complaints in respect of which the Commissioner is satisfied that the complainant has valid reasons for objecting to conciliation shall also be dealt with under the Commissioner's authority.

Sec. 193.4: The Commissioner may submit the complaint to conciliation, deal with it under the Commissioner's authority if it relates to a case described in Section 148, or reject it.

Sec.193.5: Within 60 days after the receipt of the complaint or the identification of the police officer concerned, the Commissioner must, after a preliminary analysis of the complaint,

(1) decide whether the complaint is to be dealt with under the Commissioner's authority or must be rejected;

(2) refer the complaint to the appropriate police force for the purposes of a criminal investigation if it appears to the Commissioner that a criminal offence may have been committed;

(3) where applicable, designate a conciliator and forward the file;

[...]

149 When the Commissioner closes a file, he explains his decision and presents it in writing. The complainant has a right to a review of this decision, Police Ethics Commissioner, *Rapport annuel de gestion 2009-2010. Police Ethics Commissioner*, p. 1, [on line]. http://www.deontologie-policiere.gouv.qc.ca/fileadmin/deonto/documents/publications-administratives/Commissioner/Commissioner_rapport_annuel_2009-2010.pdf (French only)

150 Otherwise the file is closed with the reasons given to the complainant. See: Police Act, sec.193.5 to 198.5.

151 Claude Corbo, président, *À la recherche d'un système de déontologie policière juste, efficient et frugal,* Rapport de l'examen des mécanismes et du fonctionnement du système de déontologie policière, Québec, ministère de la Sécurité publique du Québec, 1996 (Second Corbo Report).

Sec. 193.7: The Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer's home province or territory and the authorizing official concerned of any decision under Section 193.6, including reasons. The Commissioner shall also inform the complainant of the complainant's right to obtain a review of the decision by submitting new facts or elements to the Commissioner within 15 days. The Commissioner shall make a decision on a review within 10 days and the decision is final.

[...]

193.8. Not later than 45 days after deciding to hold an investigation, and afterwards as needed during the course of the investigation, the Commissioner shall notify, in writing, the complainant, the authority that would normally deal with the complaint in the police officer's home province or territory and the authorizing official concerned of the status of the investigation, unless, in the Commissioner's opinion, to do so might adversely affect the investigation.

[...]

1. The complaints must be handled by a body that is distinct from and independent of the police department;

2. The majority of the members of such a body must not be police;

3. [...]

4. The system must demonstrate general transparency and, in particular, in its tribunal functions, must allow public hearings;

5. [...]

6. The persons responsible for handling complaints must be appointed by a public authority."[152]

A number of participants in the consultation declared that they are not inclined to complain to the Police Ethics Commissioner, because they have little confidence in the institution, for several reasons. In the following section, the Commission will attempt to present the main complaints, along with its recommendations.

2.3.1.1 Accessibility of information and the complaint procedure

First of all, several participants reported that many citizens do not know that the Police Ethics Commission exists, or they believe that the office is associated with the police. While they recognize that the Commisioner's website is very clear about its independence, people have to consult the website to obtain the information.

In its 2009-2010 Annual Report, the Commission recognizes this situation, and points out the following:

"The Commission needs to become accessible to citizens by applying measures that will help make the ethical system known and to reinforce trust in the institution, especially from minorities.

[...] the current social context in Québec makes it imperative to ensure real accessibility to the police ethics system for members of ethnic communities. Moreover, the Commissioner is aware of their lack of trust that he has had to overcome, because their expectations are great since they feel that their rights and freedoms are in greater danger than those of other citizens.

Moreover, the need to expand our communication with visible minorities results, in particular, from the problem of "racial profiling". It is therefore vital that those individuals who feel they have been harmed by certain police behaviours or racial discrimination or racism know what recourse they have for police ethnics and are not afraid to use it." [153]

Although the website allows users to download a complaint form, many people who are unaware of this option and instead go to a police station to file their complaint. A number of participants reported that, they were told that the forms were out of stock. However they were not told to consult the website. Others, for their part, stated that they were very uncomfortable about asking for such a form at a police station.

Another an explanation for participants' misgivings with respect to the effectiveness of the police ethics

152 *Ibid* p. 18-19.

153 POLICE ETHICS COMMISSIONER, op.cit., note 149, p. 12. In this respect, the Commissioner noted that a number of activities were undertaken to establish links with the various cultural communities and that contacts had been established with the Québec Black Coalition and CRARR, among others.

system is the absence of any compensation for victims. The Commissioner is aware of this, and pointed out:

> "The key to a civil surveillance system is unquestionably the support and collaboration of the public. In fact, since a citizen generally gets no personal benefit from his police ethics complaint, we can only appeal to the civic-mindedness of the complainants and witnesses to ensure their support throughout the process."[154]

Added to this is the overlapping of various remedies and the public's lack of understanding of their complementary nature.

The Commissioner explained:

> "the overlapping ethical, disciplinary and criminal investigations are very worrying in terms of efficiency. In fact, such multiplicity is always likely to create inconsistencies. In practice, most criminal allegations are never the subject of any ethical complaints. Moreover, many citizens whose criminal complaints are rejected then fail to pursue ethical complaints when already launched." [155]

In this respect, it is important to consider another limit of the ethical system: many situations that are likely to be of interest are not pursued because the formal complaint must be filed before an investigation can begin.

These complaints clearly show the importance of making all relevant information about recourse available to citizens. Therefore, it would be desirable for an ethical complaint that involves a potentially discriminatory behaviour to be sent to the Commission in order to determine whether there should be a Charter investigation, and whether material, moral and punitive damages should be sought.

THE COMMISSION RECOMMENDS:

- **that the government amend the Police Act and the Code of Ethics of Québec Police Officers to enable the Commissioner to conduct investigations on his own initiative when required by the public interest, in order to ensure effective civilian monitoring of the police;**
- **that the ministre de la Sécurité publique take steps to enable citizens to better understand the duties of the police and the remedies provided for by the Code of Ethics of Québec Police Officers;**
- **that the government amend the Police Act and the Code of Ethics of Québec Police Officers to oblige police, subject to penalties, to inform citizens of their rights whenever they stop someone, make an arrest or write a ticket;**
- **that the government amend the Police Act and the Code of Ethics of Québec Police Officers so that the Police Ethics Commissioner, with the consent of the complainant, can send any complaint alleging potentially discriminatory behaviour to the Commission des droits de la personne et des droits de la jeunesse for review.**

154 *Ibid.*, p.12.

155 *Ibid.*, p. 3.

2.3.1.2 THE COMPLAINT HANDLING PROCESS

Participants have expressed concerns about the complaint handling process. The Commissioner makes a preliminary analysis, and then has the option to send the complaint to conciliation, order an investigation or close the file.

In this respect, it is important to remember that the Police Act stipulates that, before an acceptable complaint is sent for investigation, it must first have been referred to a conciliation process to which the complainant and the police involved are invited. If the conciliation process is successful, the complaint is withdrawn.[156]

The law also stipulates[157] that the complainant may refuse conciliation, but the process is cumbersome, and the complainants must provide reasons in writing. In addition, refusal does not guarantee that an investigation will be held instead.[158]

Several participants decried the fact that the complainant is immediately at a disadvantage, both during the investigation process and when the Committee hears the matter. For example, many of the investigators are former police officers (although former police officers are not permitted to investigate their former police department), just as in investigations held after a death or serious injuries, and many participants feel that a former police officer should not be responsible for such an investigation, especially if that officer is acting alone. It would be preferable for two investigators to be named for each investigation, and for a civilian to always participate in the investigation.

Another widespread criticism is linked to the application of section 192[159] of the Police Act, which

156 The personal record of the police officer then contains no mention of the complaint or the conciliation settlement. However, the Commissioner must keep the entry for this complaint in the complaints' register, as provided for by law. If the conciliator ends a conciliation session or determines that the parties cannot agree, he reports this to the Commissioner. The Commission then makes a new analysis of the complaint and decides what further steps to take, namely to hold an inquiry or to close the file at this stage, [on line]. http://www.deontologie-policiere.gouv.qc.ca/index.php?id=175.

157 See: sec. 193.7, op. cit., note 151.

158 The Commissioner only rarely refers a complaint for investigation. The 2009-2010 Annual Report indicates that approximately 90% of complaints are resolved by conciliation.

Furthermore, the website lists the possible outcomes of conciliation: "The Commissioner may:

- allow the request and refer the complaint to an investigator;
- dismiss the reasons, maintain the file in conciliation and designate a conciliator. At this point, the conciliation procedure becomes compulsory;
- decide to reject the complaint because of the refusal of the complainant to participate in conciliation. This measure, which is allowed, is used only as a last resort, and after the Commissioner has tried to convince the complainant that conciliation is the appropriate procedure. [on line]. http://www.deontologie-policiere.gouv.qc.ca/index.php?id=161&L=1.

159 See Police Act:

Sec. 189: The Commissioner and any person acting as an investigator for the purposes of this division may require of any person any information or document he considers necessary.

Sec. 190: No person may hinder, in any manner whatever, the Commissioner or any person acting as an investigator for the purposes of this division, deceive him through concealment or by making a false declaration, refuse to furnish him with information or a document relating to the complaint he is investigating, refuse to allow him to make a copy of such a document, or conceal or destroy such a document.

Sec. 192: Sections 189, 190 [...] do not apply in respect of a police officer whose conduct is the subject-matter of a complaint.

No statement made by a police officer in whose respect no complaint has been made and who cooperates with the Commissioner or the investigators during an investigation carried out following a complaint made against another police officer, may be used or held against that police officer, except in a case of perjury.

See: *Shallow v. Simard* 2008 QCCS 2981, July 7, 2008.

allows a police officer to remain silent before the Police Ethics Committee. Many believe that this protection against self-incrimination should only apply in criminal matters, pursuant to Section 11 of the Canadian Charter[160], and not in civil matters.

> In its brief the CRARR says it no longer recommends that victims of racial profiling appeal automatically to the Police Ethics Commissioner, because: 1) the Commissioner has rendered only one racial profiling ruling in the last decade; while an innumerable number of racial discrimination complaints have been filed over the years, 2) the Commissioner has not adopted any guidelines relative to racial profiling complaints and 3) "because section 192 of the Police Act gives police officers who are the subject of a complaint the right to not cooperate with the Commissioner's investigation, which has the effect of giving the police officers a superior advantage."

It is important to note that "the Ombudsman has already written about similar issues, specifically in 1997 on the police ethics system, on the occasion of the adoption of the Act respecting the Act Amending the Police Organization Act and the Police Act with respect to police ethics."[161]

Finally, although participants acknowledged the regulatory role performed by the police ethics system, they complained about its penalties[162], which they often find to be inappropriate or hardly dissuasive.

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160 *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act of 1982 [Appendix B of the Canada Act, 1982, c. 11 (U.K)], sec.11: Any person charged with an offence has the right (c) not to be compelled to be a witness in proceedings against that person in respect of the offence.

161 QUÉBEC OMBUDSMAN, op.cit., note 130, p. 5.

162 In determining the penalty, the Committee takes into consideration the seriousness of the misconduct as well as all the circumstances, as well as the content of the ethics record of the police officer involved. See: Committee Report, p. 15.

Police Act, sec. 233: The committee shall decide whether the conduct of the police officer constitutes a transgression of the Code of ethics and, if so, shall impose a penalty.

Before imposing a penalty, the committee shall allow the parties to be heard in respect of the penalty.

Police Act, sec. 234: Where the ethics committee comes to the decision that the conduct of a police officer is a transgression of the Code of ethics, it may, within 14 days after the date of the decision, impose on the police officer, for each count, one of the following penalties which may, where applicable, be consecutive:

(1) a warning;

(2) a reprimand;

(3) a rebuke;

(4) a suspension without salary for a period not exceeding 60 working days;

(5) a demotion;

(6) dismissal.

In addition, where a penalty cannot be imposed on a police officer because he has resigned, has been dismissed or has retired, the police officer may be declared disqualified from exercising the functions of a peace officer for a period of not more than five years.

Police Act, sec. 235: In determining the penalty, the ethics committee shall take into account the gravity of the misconduct having regard to all the circumstances, and the ethical record of the police officer.

In fixing the duration of the suspension without salary of a police officer, the committee shall also take into account any period during which the police officer was, in respect of the same facts, provisionally relieved of his duties without salary by the director of the police force to which he belongs. Where applicable, the committee may order that the police officer be paid the salary and other benefits attaching to the position that he did not receive for the period during which he was provisionally relieved of his duties which exceeds the duration of the suspension without salary imposed on him by the committee. Upon its filing in the office of the competent court by any interested person, a decision ordering the back payment of salary becomes executory as if it were a judgment of that court and has all the effects thereof.

THE COMMISSION RECOMMENDS:

- that the government amend the Police Act in order to make the conciliation process optional when a complaint is filed with the Police Ethics Commissioner and to guarantee an investigation when the Commissioner has reason to believe that the Code of Ethics of Québec Police Officers has been violated;
- that the government amend the Police Act in order to abrogate section 192, which confers upon police officers the right to silence and non-collaboration, given that the police ethics system is of civil rather than criminal nature; [163]
- that the ministère de la Sécurité publique establish guidelines for the application of the Code of ethics of Québec police officers in order to better guide the Police Ethics Committee in the attribution of the penalties provided for in sections 234 and 235 of the Police Act;[164]
- that the ministère de la Sécurité publique and the Director of Penal and Criminal Prosecution issue a directive that provides for withdrawing charges by the Crown in application of sections 24(1) and 24(2) of the Canadian Charter when the Code of Ethics of Québec Police Officers has been violated by a police officer; [165]
- that the government amend the Police Act in order that, when its is proven that a ticket was issued as a result of motives or circumstances violating the Code of ethics of Québec Police Officers, the entity that collected the fine (municipality or governerment) provide financial compensation equivalent to the sum and fees paid.

2.3.1.3 The obligation to accountability and representativity

In terms of accountability and independence, the office of the Police Ethics Commissioner is an entity that is independent of the police departments, and its personnel are exclusively civilians. It can be seen from the organization chart[166] that the Commissioner and Deputy Commissioner are lawyers. The heads of all of the other departments are lawyers, with the exception of the investigations department. The Commissioner and the Deputy Commissioner and the members of the Committee are appointed by the government for a renewable term of up to five years.

Some participants proposed that, in order to guarantee greater independence and impartiality in the ethics system, the process for appointing the Commissioner, Deputy Commissioner and members of the Committee be made known to the public.

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163 This right to silence should apply only in criminal investigations and only pursuant to section 11 (c) of the Canadian Charter, op.cit. note 160.

164 The possible penalties for each offence are listed in the Criminal Code.

165 Canadian Charter: sec. 24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

166 POLICE ETHICS COMMISSIONER, op.cit., note 145.

Several participants also deplored that persons from ethnic and racialized minorities are not fairly represented within the institution, and that there are too many former police officers among the investigators.

THE COMMISSION RECOMMENDS:

- **that the ministère de la Sécurité publique implement appropriate measures so that a majority of civilians who are not former police officers conduct the investigations and the conciliation process involving police ethics;**
- **that, in order to guarantee greater independence and impartiality for the ethics system, the process of appointing the Ethics Commissioner, the Deputy Commissioner, and members of the Ethics Committee be made known to the public;**
- **that the ministère de la Sécurité publique implement appropriate measures in order to ensure that there is fair representation of ethnic and racialized minorities and women within police ethics system.**

2.3.2 CRIMINAL INVESTIGATION OF POLICE INCIDENTS INVOLVING SEVERE INJURIES OR DEATH

In the past several decades, there have been a number of incidents involving police officers in Montréal in which persons from racialized communities have died.[167] The most recent was the death of Fredy Villanueva, who was shot by a SPVM police officer in August 2008. It is important to remember that there are several different investigatory procedures that can be triggered by such incidents, all dealing with the same event but from different angles.

In this section, the Commission will look at the process involved in investigations that could lead to criminal charges. Such investigations are conducted pursuant to the Ministerial Policy[168] applicable when deaths or serious injuries occur on the occasion of a police operation or during detention. In such situations, the Policy provides that the ministère de la Sécurité publique designates a different police department than the one to which the officers involved belong to investigate their actions.[169]

It should be noted that the remedies exercised under the Code of Ethics, under the Charter with the Commission or with regard to civil liability before a tribunal are civil, and not criminal. In such cases, the burden of proof is according to the "preponderance of evidence". This means that the plaintiff must "provide evidence that makes the existence of a fact more probable than its non-existence".[170]

Evidence in criminal matters, on the other hand, uses the standard of "beyond all reasonable doubt", based on the principle of the presumed innocence of the defendant that is enshrined in the Canadian Charter (sec. 11 (d). Because this standard is more difficult to prove, it is possible that, for the same incident, police officers could be found to be ethically or civilly responsible and not be subject to criminal prosecution.

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167 Among the racialized persons killed by Montréal police officers are Anthony Griffin (November 1987), Marcellus François (July 1991), Mohamed Anas Bennis (December 2005). For more details, see: QUÉBEC OMBUDSMAN, op.cit., note 131, p. 65-68.

168 The legislative basis of this policy is the Police Act (R.S.Q., c. P-13.1, sec. 304), which makes the ministre de la Sécurité publique responsible for determining the main orientations for police organization and crime prevention. The Police Act provides that the Minister must develop policies for the use of police organizations.

169 The investigation conducted in application of the Ministerial Policy is essentially a criminal investigation.

170 See: Jean-Claude ROYER, *La preuve civile*, 3rd ed., Cowansville, Éditions Yvon Blais, 2003, p. 113. See also: art. 2804 C.C.Q. (Civil Code of Québec, L.Q. 1991, c. 64).

During the consultation, a number of participants indicated that they did not trust this type of investigation. The Commission is of the opinion[171] that the principle of having police from one police department investigate another is problematic. When the investigation is completed, the police report is transferred to the Director of Criminal and Penal Prosecution. More often than not, there is no criminal prosecution, and fact, when one takes place, it is very rare for the police involved to be found guilty or any wrongdoing.

In the view of the participants, this process lacks transparency, especially since the reasons for deciding whether to undertake criminal prosecution are generally confidential.[172] Citizens complain that they do not receive relevant information that allows them to "evaluate the integrity, probity and efficacy of the process".[173]

Another concern that is very often reported is the impartiality of the investigators. Because police officers investigate their peers, many consider that "police" solidarity makes it impossible to trust the process.

The participants propose that an independent entity consisting of investigators who are specifically trained for this type of investigation be assigned to this task, and not existing police officers.[174] Moreover, civilians should also monitor and ensure the accountability of the process.[175]

In addition, other participants noted that measures aimed at ensuring a fair representation of ethnocultural diversity among the investigators ought to be considered.

In a report that provides a detailed analysis of the procedure that is currently followed in Québec for this type of investigation, the Québec Ombudsman comes to the conclusion that the *status quo* is not acceptable and is not in the interest of citizens, police officers or sound governance."[176]

In its analysis, the Ombudsman reiterates and adapts the criteria used in the second Corbo report[177] such as "the consistent application of formal rules, the transparency of the process and the results, impartiality, independence and, finally, oversight and accountability."[178] Eight recommendations for a reform along these lines were formulated in the Ombudsman's report. The Commission unreservedly subscribes to them, and our recommendations are largely inspired by them.

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171 Just as in the Québec Ombudsman's report.

172 In the case of the Villanueva affair, exceptionally, the Director of Criminal and Penal Prosecution publicly disclosed numerous details of the testimony collected and the reasons leading to the decision not to lay criminal charges against the police officers involved.

173 QUÉBEC OMBUDSMAN, op.cit., note 130, p.26.

174 *Ibid.*, p. 8. Incidentally, the QUÉBEC OMBUDSMAN subscribes to the conclusions of the Poitras, Corbo, Bellemarre, Davies (British Columbia) and Salhany (Manitoba) Commissions, which stated that entrusting the investigation of serious incidents involving police officers to a different police department does not ensure their independence.

175 *Ibid.*, p. 5.

176 *Ibid*, p. 8, "According to officials in the Ministère de la Sécurité publique, the Policy is now being revised. Among the changes made so far since December 2008, each instance of application of the Ministerial Policy has been announced in a press release, first as a "Ministerial Policy of independent investigation" and then, since January 2009, simply as an "independent investigation," MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, "Politique ministérielle d'enquête indépendante", press release, December 22, 2008, [on line]. http://www.msp.gouv.qc.ca/msp/communiques/communiques.asp?c=1580&theme=police (Page consulted on July 23, 2009) and ministère de la Sécurité publique, "Enquête indépendante relative à une intervention policière", press release, January 11, 2009, [on line]. http://www.msp.gouv.qc.ca/msp/communiques/communiques.asp?c=1582&theme=police (Page consulted on July 23, 2009).

177 Op.cit., note 151, p. 18-19.

5. [...]

6. [Translation] Those in charge of the complaint process must be appointed by an independent public authority.

178 QUÉBEC OMBUDSMAN, op.cit., note 130, p.15.

2.3.2.1 Legislative framework governing the investigation process

The Police Act[179] stipulates that the ministre de la Sécurité publique is responsible for preparing strategic plans, policies and the Guide des pratiques policières [Guide to Police Practices].

The practice of intervening in the event of death or serious life-threatening injuries as part of a police operation or during detention is found in this Guide.[180]

As the Ombudsman indicates, "As its name indicates, Guide des pratiques policières is a 'guide.' Police organizations are autonomous and free to determine different directives. Some police forces have adopted the guide in full, while others have adapted it to better correspond to their reality."[181]

The Ombudsman also notes that there is no definition of what constitutes a serious life-threatening injury in the Ministerial Policy.[182]

"This term is therefore evaluated on a case-by-case basis by the police chiefs responsible for notifying the ministère de la Sécurité publique when an incident occurs that, in their estimation, warrants application of the Ministerial Policy."

Pursuant to this policy, once the investigation has been completed by the designated police department, it sends its report to the Director of Criminal and Penal Prosecutions.[183] The decision to file criminal charges against the police involved is determined according to Section 25 of the Criminal Code.[184]

The Ombudsman points out:

> "From the moment when it is assigned to do the investigation, the designated police force has entire discretion to conduct the investigation according to its usual practices. In principle,

179 Police Act, sec. 289 and 304.

180 Police practice: 2.3.12 – Death or life-threatening injuries on the occasion of a police operation or during detention [translation] appears in Section 2.0 Operations, sub-section 2.3 "Arrest and Detention" of the Guide.

181 QUÉBEC OMBUDSMAN, op.cit., note 130, p. 8.

182 *Ibid*, p. 9.

183 The police department also sends its report to the Coroner's office.

184 *Criminal Code* (L.R., 1985, c. C-46), 25. (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law:

[...] (b) as a peace officer or public officer,

[...] is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[...]

(3) Subject to sub-sections (4) and (5), a person is not justified for the purposes of sub-section (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

[...]

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if:

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

> the investigation method under the Ministerial Policy is the same as in any other criminal investigation.
>
> The investigating force assigns the case to one or more of the criminal investigators who normally handle major criminal or homicide investigations. Some police forces have adopted special directives or procedures for investigations conducted under the Ministerial Policy. However, the Ministère de la Sécurité publique confirmed to us that there are no specific procedures or directives governing or formalizing investigation methods under Québec's Ministerial Policy. The method of investigation is left entirely to the police force assigned to this.
>
> [...]
>
> Ministère de la Sécurité publique has no by-law, directive, or policy setting procedures specific to such inquiries."[185]

A recent illustration of the anachronisms of such a legislative vacuum was provided by the Ombudsman with respect to the Villanueva affair:

> "The Sûreté du Québec investigators in charge of the investigation did not attempt to question the police officers involved in events before receiving written reports from them. The witness officer filed her report six days after the events and the officer directly involved, thirty days later. After receiving the written reports, investigators chose not to question the witness officer, and met with the officer directly involved, who exercised his right to silence.
>
> The Ombudsman is concerned that, unlike other witnesses, the officers involved were not separated from each other and questioned directly. Furthermore, the amount of time given the officers to provide their own versions of the facts remains unexplained." [186]

The Commission, like the Ombudsman and a number of participants, maintains that the Police Act must be amended in order to provide a regulatory framework specifying the standards for how an inquiry should take place and how it is made public. The Ombudsman clearly set out the milestones and elements that such a framework ought to include:

> That the Police Act [...][187] be amended to provide for regulatory oversight of the investigation process for incidents involving police officers that lead to death, serious injury, or injury resulting from the use of a firearm or conducted energy device during a police intervention or detention. These new legislative and regulatory provisions should include:
>
> i. A definition of "serious injury"
>
> ii. A definition of "witness officer" and "subject or involved officer"
>
> iii. The requirement that the police force involved in the events immediately report the incident to the appropriate body, which will take charge of conducting an investigation of the events
>
> iv. The obligation on the part of the police force involved to preserve the integrity of the evidence

185 Op.cit., note 130, p.16.

186 Footnote in the Ombudsman's report, p. 18: "Stéphanie Pilotte submitted her report on August 15, 2008, and Jean-Loup Lapointe on September 9, 2008." This information was supplied to us in a conversation with François Brière, criminal and penal prosecuting attorney designated December 18, 2008, by the Director of criminal and Penal Prosecutions to advise Sûreté du Québec agents on all aspects of their investigation. The information was later confirmed by Sûreté du Québec investigator Bruno Duchesne at the coroner's inquest hearings held between October 26 and 30, 2009.

187 R.S.Q. c. P-13.

and scene pending the arrival of the investigators designated to conduct the investigation

v. The granting of priority at the scene to the investigators responsible for investigating the involved officers

vi. A prohibition against communication between officers involved in the incident and the obligation on the part of the police chief to ensure that involved officers are segregated until they can be interviewed by the investigators in charge of the investigation

vii. An obligation on the part of investigators to interview the involved officers (witnesses or subjects) as quickly as possible and within a maximum of 24 hours after the incident, unless there are exceptional and justifiable circumstances

viii. The obligation on the part of witness officers to fully cooperate with the investigation and provide all relevant documents, including notes on the events

ix. The establishment of an ethics violation for any officer who breaches or fails to comply with the regulatory requirements set forth, with investigators having the option of filing a complaint in this regard with the Police Ethics Commissioner. [188]

THE COMMISSION RECOMMENDS:

- **that the government amend the Police Act in order to provide a regulatory framework for the process of investigating incidents involving police officers that lead to death or serious injury, and that this framework include all the elements and milestones recommended by the Ombudsman;**
- **that the ministère de la Sécurité publique adopt guidelines to ensure greater transparency for the investigation process, in particular with respect to the reports transferred to the Director of Criminal and Penal Prosecution.**

2.3.2.2 Need to assure the impartiality of this type of investigation

These investigations are currently conducted by police, but the Ministerial Policy is essentially based on the assumption that, if the investigation is conducted by a police department different from the one that is involved in the events, it allows for an independent investigation.

However, a number of the participants in the consultation asserted that they could not have confidence in an investigation conducted by police officers who are asked to judge their peers. While acknowledging the police expertise necessary to conduct these investigations, these participants, along with the Ombudsman, consider that the presence of civilian investigators could assure greater impartiality. In addition, fair representation of ethnocultural diversity and women among the investigators is essential in order to improve the process.

188 OMBUDSMAN, op.cit., note 130, Recommendation 1, p. 21-22.

Given these imperatives, the creation of an independent entity consisting of civilians and former police officers would be the route to take. It is a model that is already used in some Canadian provinces.[189]

THE COMMISSION, LIKE THE OMBUDSMAN, RECOMMENDS:

- **that the government amend the Police Act in order to establish a Special Investigations Bureau, an independent agency that would be charged with conducting investigations of incidents involving police officers that result in death or life-threatening injuries;**
- **that the government take steps to ensure the presence of civilian investigators who are not former police officers on the teams responsible for conducting this type of investigation;**
- **that the government promote a male-female balance and a representation of Québec's ethnocultural diversity among those responsible for conducting, monitoring and supervising these investigations.**

2.3.2.3 Accountability and reporting

For many participants, accountability and reporting remain a way of ensuring the legitimacy of the investigations. At present, the ministère de la Sécurité publique is not able to report in a satisfactory and detailed way on the application of the Ministerial Policy by police organizations.

Moreover, in order to ensure that the entire process is transparent, an independent organization could be responsible for coordinating such investigations (such as a Special Investigations Bureau)[190] and issue an annual public report.

THE COMMISSION RECOMMENDS:

- **that the ministre de la Sécurité publique submit an annual report to the National Assembly on investigations of incidents involving police officers resulting in a death or serious injuries, and on the decisions made in such cases;**
- **that any new independent entity charged with investigating incidents involving police officers that result in death or serious injuries submit an annual report to the National Assembly on the management of the investigations it has conducted.**

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189 Experience acquired in other administrations demonstrates that it is possible to train qualified civilian investigators to conduct investigations of serious incidences involving police officers. See: George W. ADAMS, Q.C. (2003), *Review Report on the Special Investigations Unit* See: George W. ADAMS, Q.C. (2003), *Review Report on the Special Investigations Unit Reforms*. Prepared for the Attorney General of Ontario, [on line]. http://www.siu.on.ca/adamsreview2003.pdf; Thomas R. BRAIDWOOD, Q.C. (2009), *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia,* Braidwood Commission on Conducted Energy Weapon Use, June 2009, [on line]. http://www.braidwoodinquiry.ca/report/;Patrick J. LESAGE, Q.C. (2005). *Report on the Police Complaints System in Ontario*. Submitted to the Attorney General. Toronto: Ministry of the Attorney General, [on line]. http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/LeSage/enfullreport.pdf; SPECIAL INVESTIGATIONS UNIT (SIU). *One law: 2007-2008 Annual Report* . Mississauga,Ontario: Special Investigations Unit [on line]. http://www.siu.on.ca/pdfésiu - 2007-2008.pdf; Josiah WOOD, Q.C. (2007). *Report on the Review of the Police Complaint Process in British Columbia*. Submitted to the Minister of Public Safety and Solicitor General, British Columbia.

190 Recommendation of the Québec Ombudsman.

3. THE EDUCATION SECTOR

3.1 CURRENT CONTEXT AND ISSUES

During the public hearings, a number of groups, researchers and officials in the education sector, echoing the issues raised in our consultation document, called our attention to a varied range of factors that compromise the right of youth from racialized minorities or immigrant groups to non-discrimination, both in the application of codes of conduct and disciplinary measures and with respect to decisions, measures and organizational policies that have an impact on their educational path and their chances of success. These many forms of discrimination are not directly the result of the logic of racial profiling as such.

The concept of profiling is applied to decisions and measures intended to maintain discipline and guarantee security within the school environment. In fact, the application of codes of ethics and disciplinary punishments (e.g.: detention, suspension, expulsion, etc.) constitutes "actions taken by persons in authority [...] for reasons of security, safety or protection of public." In addition, when these actions are based on real or assumed identifications, such as race, colour, ethnic or national origin, and are without real grounds or reasonable suspicion, and have the effect of exposing the persons concerned to different treatment or disproportionate punishment, the application of the concept of racial profiling to describe the nature of the discriminatory act performed is entirely justified.

However, it is different with decisions, measures or organizational policies that determine the educational path of students. The concept of profiling does not apply. There is no doubt that the actions or decisions of the school officials involved are taken by persons in positions of authority, but they are not taken for reasons of security, safety or protection of the public. The discrimination factors that help to explain the educational problems of racialized students cannot be reduced to merely a series of individual decisions, based consciously or not on racial prejudice. As we will see, this is a form of systemic discrimination. Such discrimination is based in part on individual decisions affected by prejudice, but also, and significantly, on organizational models or institutional structures that, although appearing to be neutral, are not adapted to the needs of certain groups or are clearly harmful to them.

As we will see below, the over-representation of Black communities or immigrant students in special education classes, among drop-outs or on educational paths that do not meet their needs and interests cannot be explained solely in terms of ethnoracial discrimination. The disadvantages that affect certain racialized minorities or recent immigrants are a factor that cannot be neglected in responding to the problems of school drop-out rates and failure among youngsters from these communities. That is why any measure that is intended to promote better school results for racialized or immigrant students must take into account the inter-relationship between disadvantage and ethnoracial identity.

In recent years, the government and the entire education sector have made success and retention in school a priority goal, and a number of initiatives have been introduced in order to achieve them. However, as part of these efforts, little attention has been paid to the problems that more specifically

affect youth from racialized minorities and the children of recent immigrants. During the public consultation, a number of participants deplored that the education sector is little inclined to recognize the existence of ethnoracial inequalities in access to educational success, and even less willing to engage in any self-criticism of its standards and organizational procedures in connection with this problem. In terms of racial profiling associated with the application of codes of conduct, the attitude of denial in which certain members of the education sector persist contrasts sharply with the testimony of youth and community organizations that we heard.

The Commission hopes that this report will be an opportunity for the education sector to reconsider its practices and recognize the problems of ethnoracial discrimination, whether direct, indirect or systemic. Just as in the public security sector, the main obstacle to their recognition of discrimination is, if not the absence, then at least the shortage of data to guide measures aimed at promoting respect for the right of equality of youth from racialized minorities and recent immigrants throughout their schooling.

3.2 Disciplinary measures and the application of codes of conduct

As noted above, the way in which codes of conduct and disciplinary measures are applied in the education sector can result in manifestations of racial profiling. As observed with respect to public security, racial profiling is especially sustained by the assumption, very often unconscious, that certain racialized groups, and especially young Blacks, are more likely to disturb order or threaten security within a school. In the following paragraphs, we will suggest certain potential solutions for reducing the risks of racial profiling associated with the school's exercising of its responsibilities with respect to order and security.

3.2.1 Targeted scrutiny

Because they are considered to be at greater risk of adopting anti-social behaviours, youth of racialized minorities receive more intense scrutiny by school personnel than what is applied to other students. According to this logic, disciplinary control adopts groups of individuals who are pre-judged as being more likely to adopt objectively threatening or disruptive behaviour as its target rather than the actual behaviour. As has been reported to us, groups of young Blacks in the same physical space, such as a cafeteria or a common area, are likely to attract a disproportionate amount of attention from the personnel responsible for maintaining order in the school.

According to much of the testimony that we heard, this form of profiling has its source in prejudices and stereotypes that ascribe a greater cultural predisposition to delinquency to youth from certain racialized groups. Several participants deplored the tendency of school personnel to rush to suspect, without reason that young Blacks and young Latinos, for example, belong to a street gang as soon as they gather in a group. As such, it is not rare for the scrutiny exercised by school personnel to be greater during extracurricular activities that are very popular among young Blacks, such as basketball or hip-hop shows, and that on such occasions, for exceptional security arrangements be put in place, such as systematic ID checks in order to detect undesirable outside elements.

> Black students, from a Montreal cégep reported that they were the target of unjustified ID checks at a dance organized at school. Apparently, the security guards only checked the IDs of young Blacks, on the grounds that they suspected that there was a drug dealer in the school.

Of course, exceptional scrutiny may be understandable if the personnel have reason to believe that members of street gangs are present in the school, to use the example reported to us. However, some youth challenge the tendency of school authorities to intervene more on the basis of presuppositions linked to prejudice than on the basis of targeted information or rational signs that would allow for the identification of real suspects. In all cases, even in cases where the school tightens its security on the basis of reasonable grounds, it should ensure that the methods used do not turn into a form of racial profiling.

3.2.2 The application of disciplinary measures: A last resort?

Based on this disproportionate scrutiny given the same behaviour, groups of racialized students are more likely to be punished for violating rules that are also applied to them more severely. In this respect, one criticism that was frequently heard was of the tendency of school officials to turn to disciplinary measures too quickly for racialized students. In other words, school personnel are criticized for not sufficiently respecting the principle of gradation of response in applying punishments. It is said that they frequently turn to punitive measures too quickly without having first exhausted the range of "alternative" measures available to assist students in correcting their behaviour. The severity of the punishment ought to be proportional to the gravity of the fault charged, and the most severe punishments, such as suspension or expulsion, should only be used as a last resort.

Schools too often rely on a repressive approach, in which every fault automatically calls for punishment. Although the trend for schools to prefer a repressive rather than a preventive approach in response to misbehaviour does not affect racialized students exclusively, it would appear that they are disproportionately subject to its effects.

Several participants noted that the repressive approach is more appropriate for police than for schools, which, given their socialization mission,[191] should instead emphasize prevention, education and reintegration. Many people who took part in the public hearings would prefer that interventions by school personnel to correct misbehaviour put more emphasis on dialogue and sensitization. They also stressed the importance of keeping students in school in order to maintain their motivation and perseverance. It should be noted that, according to many participants, schools would benefit from establishing partnerships with community organizations and collaborating with parents in seeking negotiated solutions for students with behavioural problems. As a result of their better grasp of the situation, parents, like community organizations, are often better able to assist school officials in achieving behavioural changes in students. Such an approach is more likely to yield positive results than purely repressive ones (e.g.: suspension, expulsion, reports to the police).

3.2.3 Involvement of school administration

In order to ensure that interventions by school personnel who are responsible for applying the code of conduct are free of discrimination, school administrations must first analyze the situation at their school. This will provide the knowledge required to act in a focused way in order to correct any problem. Too few school administrators take the time to review issues associated with security and discipline in their school with an eye for discriminatory bias. In order to ensure a better analysis of the situation and detect and measure the scope of racial profiling, if present, it is necessary to document the application of disciplinary measures.

191 *Education Act*, R.S.Q., c. I-13.3, sec. 36(2): (In keeping with the principle of equality of opportunity, the mission of a school is to impart knowledge to students, foster their social development and give them qualifications, while enabling them to undertake and achieve success in a course of study." (emphasis added).

School administrators ought to make it clear to their staff what they require with respect to the prevention of racial profiling, and ought to conduct regular follow-up in order to ensure that their instructions are actually being followed. From a preventive approach, the administration should organize training pertaining to discrimination and racial profiling, not only for supervisors, but for all staff members who are likely to apply the code of conduct and rules as part of their work.

It would seem that, in the past few years, more and more secondary schools, cégeps and universities have sub-contracted order-keeping and security functions on school property to private agencies.[192] When that is the case, it is more difficult for the administration of the institution to apply "quality control" to the work done by guards who do not report directly to them. However, just as the security guards must be accountable to the agency that employs them, the agency is accountable to the school administration with which it has a service contract. Therefore, as a client of the agency, the school has the power, and even the obligation, to ensure that the intervention methods used by the guards respect the right to equality without discrimination guaranteed to students, not only by the Québec Charter, but also in most of the "educational mission statements" and codes of conduct adopted by each school.

3.2.4 The repercussions of profiling on educational success and retention

It is worth emphasizing that, the discriminatory application of codes of conduct and of punishments for security reasons in school is not unrelated to the problem of school drop-out rates and failure among youth from racialized minorities. Racialized students who are expelled or suspended are more likely to experience failure in school, and as a result of lack of motivation, to drop out. In addition, during those periods when their schooling is interrupted, or if they drop out early, these youth are likely to spend more time in public spaces, increasing their contacts with police, and by that fact alone, placing them at greater risk of experiencing profiling.

> "I'm Colombian. I have two sons. One has dark skin while the other one, who has ligther skin, has never been stopped and questioned by police. Two sons, the same education, two different paths. I believe that the school is responsible for the difference. If the school principal hadn't taken away soccer from my son (as a disciplinary measure), he could have turned it around and completed high school. He did eventually finish high school but at adult education when he was 18."
>
> A mother of Colombian origin

Moreover, once they are adults, drop-outs, whatever their origin, are at greater risk of experiencing poverty and socio-economic exclusion. In short, racial profiling cannot be considered to be independent of the more general systemic discrimination that youth experience in their contacts and interactions with government institutions.

THE COMMISSION RECOMMENDS:

that school administrations: 1) explicitly state in their educational mission and organizational standards that discrimination in all its forms is prohibited at school, including with respect to maintaining order, discipline and security and 2) examine their practices and organizational standards in order to ensure that they are free of discriminatory bias;

192 In the case of secondary schools, the work of the security agents is carried out in collaboration with members of the school staff.

- **that school administrators collaborate more closely with parents and community organizations in order to find solutions to student behavioural problems;**
- **that school boards offer training on discrimination and racial profiling to school administrators, faculty and non-teaching staff;**
- **that, when school administrations hire a private security agency, they require that the work of the guards be free of racial profiling, that clear instructions to that effect be given and that close control be exercised over them.**

3.3 EDUCATIONAL PATH AND ACADEMIC SUCCESS

In this section, the Commission will examine the impact of certain socio-demographic factors, such as origin, colour, immigration status and socio-economic status, on the guidance that students receive starting at secondary school toward differentiated education options, and on their success at school and graduation. Although the issue of discrimination is only one of the explanatory factors to be taken into account in understanding this phenomenon, it nevertheless remains unavoidable.

However, some qualifications are required with respect to the terms used. In this regard, we were told by a number of participants that the logic at work in these processes is often more of a reflection of systemic discrimination than actual profiling. When there are practices and organizational models at work that have disproportionately harmful effects on students from racialized minorities or immigrant origins, even though they appear to be neutral, there is systemic discrimination involved.

Furthermore, such systemic discrimination may be sustained by prejudices, whether conscious or not. For example, it sometimes happens that the orientation of a student toward particular educational options and the earlier classification and evaluation practices used in orienting that decision are based on prejudices that are founded on the student's origin or culture.

3.3.1 THE IMPACT OF PREJUDICE ON THE EDUCATIONAL PATH

During the consultation, a number of participants mentioned the influence of prejudice on the orientation process in the various educational paths available to students, based on their own experience in the field or on their professional expertise.

The education sector often resorts to categorization in the processes used to orient and evaluate students. Although these processes are inevitable, they nevertheless lead to labelling, in the sense that school personnel are at risk of categorizing students as a function of their social status or group identity, whether real or assumed. Such labelling has the effect of causing the school to reduce the range of possibilities offered to the student. It can also have an impact on the way the counsellor interacts with the student, such as investing less effort with some students because of lower expectations, or automatically orienting students toward education that is focused on employment, based on some prejudice about their capacity to pursue later schooling. It was mentioned on numerous occasions during the consultation that young Blacks were especially likely to be victims of these stereotypes, expressed in the form of lower expectations. Due to a lack of vigilance on the part of the school administration, such prejudice and discriminatory attitudes, whether conscious or not, may ultimately leave a systemic imprint on the school's institutional culture. Although categorization is inherent to every form of perception, it is important for school personnel to be aware of it in order to limit its impact on how they evaluate the capacities or chances of success of students.

Schools are often reproached for adopting a form of communication that is overly directive, which dictates how parental participation must be exercised. The school tends not to recognize parents as an equal partner in the educational and socialization functions that it assumes with their child. In fact, some researchers[193] and community organizations, such as the Third Avenue Resource Centre, assert that this model of asymmetric communication is applied especially to immigrant parents, because of the tendency of school personnel to disqualify them from the outset based on the pretext that they do not have the cultural competencies to properly understand the school's expectations of them.

Prejudices and ethnocultural stereotypes can not only affect the relationship between counsellor and student, but also the relationship between school and parents. More specifically, school personnel do not always give parents from racialized groups the place they should have in decisions pertaining to the choice of educational paths offered to their child. We were told that a number of parents believe that they are not sufficiently involved in the decision-making process in the choice of paths. They have the impression that they are only informed once the decision has been made, which makes them feel unqualified.

The parent-school relationship can seem uneasy when the counsellors come to perceive problems in establishing a connection with parents as cultural obstacles. For example, it sometimes happens that school personnel view the unavailability of parents as a reflection of their lack of commitment to school, and do not try to dig deeper in order to understand the underlying causes, and in particular, factors of an individual or socio-economic nature.

> According to the testimony of one school principal, it requires a lot of will and perseverance to establish good contacts with some parents, and the school staff must not automatically conclude that the unavailability of parents is because they have abdicated their responsibility.

In addition to seeking to neutralize the prejudices of school staff, the school also has the responsibility to be creative when establishing communication with immigrant parents is difficult. Current research in education demonstrates that the most successful partnerships between school and immigrant families are the results of the school's capacity to be creative in developing communications strategies. Therefore, in a study of the conditions required in order for family-school collaboration models to succeed, researchers Kanouté and her colleagues demonstrated that the most effective formulas are not the application of a single rigid model, but rather those that reflect the capacity of the school to adapt its communication strategies to the social, economic and cultural realities of immigrant families.[194] The researchers invite the school to adopt alternative models of collaboration when necessary, such as recognizing "mediators" mandated by parents to act on their behalf, including members of their extended family or representatives of community organizations or ethnic organizations, as legitimate interlocutors.

THE COMMISSION RECOMMENDS:

that school boards and schools that serve a clientele of ethnic and racialized minorities make it compulsory for all of their personnel to attend antiracism and intercultural training;

193 Michèle Vatz Laaroussi, Fasal Kanouté and Lilyane Rachédi, "Les divers modèles de collaborations familles immigrantes-écoles: de l'implication assignée au partenariat," *Revue des sciences de l'éducation*, vol. 34, No. 2, 2008, p. 291-311.

194 *Ibid.*

- **that schools develop alternative models of parent-school collaboration, specifically recognizing persons or parties asked by parents to act on their behalf, including members of their extended family or representatives of community organizations, as legitimate interlocutors.**

3.3.2 For better targeted support for disadvantaged schools

A number of participants insisted that the efforts to promote educational success by immigrant students and those from Black communities should be closely harmonized with the fight against poverty. In fact, we note that youth from disadvantaged communities are more likely to fail at school and drop out, regardless of whether they belong to an ethnocultural or racialized minority. Therefore, according to the MELS data compiled by the Conseil supérieur de l'éducation, the graduation rate at the end of secondary school in Québec in 2006-2007 was 65.3% in the most disadvantaged schools, compared to 79.1% in the most advantaged ones.[195]

The Commission is pleased that, over the past few years, the MELS has developed various programs to facilitate educational success and retention for students in difficulty largely, but not exclusively, from disadvantaged communities. These programs include: "New Approaches, New Solutions"; "I care about school! All together for student success"; "Success for All"; "Supporting Montréal Schools Programs, and Tutoring services, and emergent literacy materials for disadvantaged schools programs.

All of these measures and the programs aimed at encouraging success and retention in schools serving a disadvantaged clientele can only benefit racialized students. That is because, as demonstrated above, a large proportion of these students come from families with high rates of socio-economic disadvantage. While highly laudable, for the most part, these programs are hardly or badly adapted to the needs of the multi-ethnic schools of Greater Montréal.

First, some participants pointed out during the consultation that the index that is currently used by the MELS to allocate funds for additional pedagogical support to disadvantaged schools is poorly adapted to the disadvantages experienced by immigrant children who attend Montréal's multi-ethnic schools. The two indicators used by the MELS for this purpose, as recommended by the Institut de la statistique du Québec, are the under-scolarization of the mother (2/3 of the index weight) and prolonged unemployment (1/3 of the index). In fact, these two indicators may underestimate the disadvantage among many immigrant or racialized families. It is known that the education rate of immigrant mothers is above average because of a selection grid that gives preference to candidates with a high level of education. However, in Québec, the fact that a foreign-trained worker is well-educated is not necessarily a guarantee of successful socio-economic integration given the numerous obstacles such persons face, especially in terms of gaining recognition for their degrees and experience.[196] As a result, a number of them experience occupational downgrading upon arriving in Québec that can result in socioeconomic decline.[197]

In light of this, it is important for the MELS to consider whether the indices that are currently used to measure disadvantage in a school's territory are correctly adapted to the poverty profile that is typical of recent immigrants.

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195 Conseil supérieur de l'éducation, *Rapport sur l'état et les besoins de l'éducation 2008-2010. Conjuguer équité et performance en éducation, un défi de société*, Québec, June 2010, p. 75.

196 Paul Eid (dir.), *Pour une véritable intégration: droit au travail sans discrimination*, Montréal, Fides, 2009 (proceedings of the symposium of this name organized by the Commission in November 2008).

197 Marie-Thérèse Chicha and Éric Charest, "L'intégration des immigrés sur le marché du travail à Montréal. Politiques et enjeux", *Choix IRPP*, vol. 14, No. 2, March 2008, ISSN 0711-0685, [on line]. www.irpp.org.

THE COMMISSION RECOMMENDS:

- **that the MELS, in collaboration with the Institut de la statistique du Québec, conduct validity tests in order to ensure that the index of disadvantage used to determine which schools are eligible for additional financial aid is properly adapted to the schools that serve a high proportion of racialized or immigrant families.**

Similarly, it is important that the MELS budgets intended to provide educational support for students in difficulty are actually used for this purpose. In fact, some participants from the education sector indicated that it was not rare for these funds to actually be used for the purchase of materials or resources. While this responds to a real need (e.g.: purchase of computers, educational projects intended for other target groups), it does not meet the specific needs of students in disadvantaged areas. In order to deal with this problem, the MELS should insist that the beneficiary schools report back on how the funds were actually spent more systematically, in order to ensure that they go toward providing educational support for "at-risk" student.

Moreover, it would be useful for the MELS to supply the schools with guidelines that establish precise criteria to be met by projects in order to be eligible for the funding programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods.

THE COMMISSION RECOMMENDS:

- **that the MELS demand better reporting from schools that benefit from financial aid programs for disadvantaged schools, in order to ensure that the funds are actually used for projects to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;**
- **that the MELS provide schools with guidelines that define the precise criteria that proposed projects must meet in order to be eligible for funding from programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods.**

3.4 Special needs students

Pursuant to the Education Act and the Policy on Special Education entitled Adapting Our Schools to the Needs of All Students (1999), the MELS has agreed to offer personalized educational services for students with special needs. Since 2000, these students have fallen into two administrative categories: students with handicaps, social maladjustments or learning difficulties (SHSMLD) and "at-risk" students. While the first category consists of students with a handicap or serious behaviour problem diagnosed by a professional, the second, which is a much larger category, consists of students who "present certain vulnerability factors that may affect their learning or behaviour, and who may therefore be at risk, especially of falling behind either academically or socially, unless there is timely intervention."[198]

The intervention plans prepared for students with special needs (both categories) may call for the student to remain in the regular class with support measures or to be sent to an alternative educational setting, also called "special" classes, to which only students with special needs are assigned. However,

198 Ministère de l'éducation, du loisir et du sport, *Organization of Educational Services for At-Risk Students and Students with Handicaps, Social Maladjustments or Learning Difficulties*, 2007.

this option is only to be applied as a last resort. In fact, in its Policy on Special Education, the MELS identifies seven preferred ways of promoting the educational success of children with handicaps, social maladjustments or learning difficulties[199]. In fact, in more than one place in the Policy, it states that integration into regular classes constitutes the standard under the Education Act toward which every school board should tend and has the obligation to offer adapted or specialized students to students whose special needs make them necessary, to the extent possible and within the guidelines provided by law. It is only in cases of excessive constraints that the school board may make a choice other than integration into regular classes for children with special needs.[200] The Commission has also long recommended such an approach, both in court[201] and in its opinions and briefs.[202]

The Commission is aware of the fact that the decision to send a student to a special class is sometimes in the child's best interest. That being said, during the public consultation, some participants asserted that students from certain minorities are identified as "at-risk" more often, and are assigned to special classes more often. What is really going on? Is there an over-representation of racialized or immigrant students among children diagnosed as SHSMLD or "at-risk" among students sent to special classes? If so, what accounts for this over-representation, and what are the potential solutions for eliminating it? Finally, do we have all the data necessary to draw an accurate snapshot of the situation?

3.4.1 SHSMLDs

Within the context of the consultation, a number of observers and experts from the education sector asserted that the processes for evaluating and categorizing students as SHSMLDs could be tainted by racial profiling. In the following paragraphs, we will examine the existing data pertaining to these students among immigrant and racialized students, taking care to distinguish between those who are sent to special classes and those who are integrated into regular classes.

First of all, the MELS data shows that the proportion of SHSMLD students among immigrant children[203] for the 2000-2001 and 2003-2004 school years was the same or slightly below the general average, both among integrated SHSMLD students (regular classes) and non-integrated ones (special classes).[204] However, there is one notable exception: the proportion of SHSMLDs among students born in the

199 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Adapting Our Schools to the Needs of All Students, A New Direction for Success, Policy on Special Education*, 1999: "Placing the organization of educational services at the service of students with special needs by basing it on the individual evaluation of their abilities and needs, by ensuring that these services are provided in the most natural environment for the students, as close as possible to their place of residence, and by favouring the students integration into regular classes." p. 20 (emphasis added).

200 *Ibid.*, p. 21: Only if integration would impose an excessive constraint on the school board or significantly undermine the rights of the other students can a school board choose a course of action other than to integrate the student into a regular class or group. However, since rights are protected by charters, the school board would have to prove the existence of an excessive constraint; an unjustified refusal could constitute discrimination on the grounds of the handicap of the person about whom the decision was made.

201 For example: *Commission des droits de la personne et des droits de la jeunesse v. Commission scolaire des Phares*, QCTDP, No. 100-53-000009-032, November 30, 2004; *Commission des droits de la personne et des droits de la jeunesse c. Commission scolaire des Phares*, QCTDP, 19, No. 100-53-000012-085, December 2, 2009.

202 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, *L'inclusion en classe ordinaire des élèves présentant une déficience intellectuelle. Proposition d'un cadre organisationnel*, Daniel Ducharme, (Cat: 2.120-12.50), 2007.

203 The category of "students from immigrant families" in the MELS study, includes any "student born outside of Canada (first generation) or born in Canada (second generation), but one of whose parents was born outside of Canada or who does not have either French or English as their mother tongue," MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Portrait scolaire des élèves issus de l'immigration: de 1994-1995 à 2003-2004*, 2006, p. 35.

204 *Ibid.*, p. 18. For example, in 2003-2004, among students from immigrant families, the proportion of non-integrated special needs students was 1.3% in primary school and 1.6% in secondary school, compared to 1.3% in primary school and 1.9% in secondary school for all students.

Caribbean and Bermuda is double the average. Marie McAndrew and Jacques Ledent obtained concordant results in their study of educational success among students from Black communities[205] attending public secondary schools in Québec.[206] Thus, in the French language sector, students who are born or who have one parent born in the Caribbean are more likely than other students, whether they are immigrant or not, to be found SHSMLD and to be sent to a special class for that reason. The situation is particularly alarming in the case of Creole-speaking Caribbean origin students[207]. They have a rate of 17.7% among SHSMLD students, of which 14.8% of which are non-integrated, whereas these proportions are 12.6% and 8.9% respectively among all students.

Based on these data, taken from two separate studies with consistent results, the Commission notes a recurring trend. Students from Caribbean Black communities who are diagnosed as SHSMLDs and especially those whose mother tongue is Creole, tend to be sent to special classes more often than other students. The Commission considers these results to be of sufficient concern to urge the MELS and those involved in the education sector to ask themselves questions concerning the reasons underlying this over-representation.

It would be necessary to conduct more intensive studies in order to be able to interpret these figures adequately. First, it would be important to break down these data as a function of the types of problems that justify a SHSMLD diagnosis. This would make it possible to obtain a more precise snapshot of the various types of handicaps or problems diagnosed within each group of immigrant students. For example, are they more concentrated in the categories of "intellectual or physical disabilities" or "serious behaviour problem"? This exercise would enable us to detect possibly discriminatory biases, if present, in the attribution of problem codes, the decision as to whether to integrate a diagnosed student into regular class, or finally, in the educational services provided in the intervention plan.

It should be noted that, during the consultation, a number of participants called on the MELS, along with the schools and school boards, to review their evaluation tools in order to ensure that they are not tainted by prejudices or cultural biases that are likely to result in inadequate classifications. However, beyond the issue of tools, it is important to ensure that the professionals who are responsible for making the diagnoses take the cultural dimension into account in their evaluation. Consideration of the familial and cultural context results in more refined and nuanced readings of the problems, and makes it possible to adapt the measures to the real needs of each student more effectively. Such a caution especially applies to certain types of diagnosis, such as behavioural problems or language impairments.

We currently have little relevant data to ensure that the evaluation and classification of special needs students is not tainted by discriminatory bias.

205 In the study, considered as belonging to "Black communities" were students born or whose parents were born in the Caribbean or Africa and whose mother tongue is French, English or Creole.

206 Marie McAndrew and Jacques Ledent, *Educational success among high school students from black communities*, Research report, September 2008.

207 The study by McAndrew and Ledent shows that, in general, students of Caribbean origin whose mother tongue is Creole encounter more serious problems in school than students of Caribbean origin whose mother tongue is either French or English. These differences cannot be explained without taking into consideration, notably, the fact that students of Caribbean origin whose mother tongue is Creole, were part of a large wave of Haitian immigration that included a large proportion of disadvantaged persons with low levels of education.

THE COMMISSION RECOMMENDS:

- **that the MELS break down the data pertaining to SHSMLD students in such a way as to provide a more refined statistical snapshot that will make it possible to see the relative weight of racialized and immigrant students within each sub-category and the proportion of such students who are sent to special classes;**

- **that the MELS revise its evaluation tools for special needs students in order to ensure that they are not tainted by cultural biases that result in inadequate classifications, and to ensure that the specialized personnel who are authorized to make these classifications take the cultural dimension into account in their evaluations.**

3.4.2 "AT-RISK" STUDENTS

Since 2000, "at-risk" students have been those who "present certain vulnerability factors that may affect their learning or behaviour, and who may therefore be at risk, especially of falling behind either academically or socially, unless there is timely intervention." [208]

The Commission shares the point of view expressed by a number of participants in the consultation, to the effect that the introduction of the "at-risk" student category in 2000 poses a problem, because it gives substantial discretionary power to school personnel in terms of deciding which students it should be applied to. It is well known that the exercise of discretionary power leaves a lot of room for subjectivity among those who wield it, and therefore, increases the risks that discriminatory prejudices, such as those based on colour, language, ethnic origin or social class, will taint decision-making processes. In the next section, the Commission will examine the risks of discrimination associated with the use of this category as a tool for detecting certain students in difficulty.

Whereas the SHSMLD category is divided into sub-categories[209], each of which is defined according to specific criteria that only certain specifically designated professionals are entitled to use for diagnostic purposes, the label of "at-risk" student instead has been much vague and more of a general criteria, and can be attached to a student without requiring any clinical diagnosis. Therefore, this category may include students with slight intellectual disability as well as those with learning disabilities or minor behavioural problems.

The introduction of this category is a reflection of the MELS's will to facilitate access to financial resources for students whose learning or behavioural difficulties would have been too slight to justify a SHSMLD diagnosis under the old system, which was then the only way for a school to obtain additional financial assistance for students with special needs. Therefore, the MELS explains that it "introduced the notion of "at-risk" students and abolished the declaration of students as having social maladjustments or learning difficulties. This was done to ensure that all students who experience difficulties in their schooling will be given proper support, without necessarily being labelled as having handicaps, social maladjustments or learning difficulties."[210] Although these objectives are understandable, the Commission is concerned by the substantial room left for arbitrary decisions by school personnel who are responsible for applying the "at-risk" student category.

In addition, since the MELS introduced this category, it no longer seems to be producing data that would allow for a count of the students to whom it has been applied or what percentage they

208 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, op.cit., note 198.

209 *Ibid.*, p. 12 to 22. These sub-categories are: severe development problems, moderate to severe intellectual impairments, mild motor impairments, organic impairments, severe motor impairments, visual impairments, hearing impairments, pervasive developmental disorders, psychopathological disorders, language disorders.

210 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, op.cit., note 198, p. 2 (emphasis added).

represent among special needs students, and more specifically among those placed in special classes. It is also impossible to ascertain the profile of "at-risk" students, and therefore, to track their academic trajectory. In addition, it becomes difficult to identify which factors influenced the decision to identify a student as being "at risk," and the precise nature of the difficulty (e.g.: behavioural disorder, learning disability, etc.).

There is clearly an absence of data pertaining to the characteristics of "at-risk" students. It is thus essential for the MELS to produce data and analyses in order to ensure that the decision-making is free of discriminatory bias toward students from racialized groups, and in particular those of Caribbean origin.

THE COMMISSION RECOMMENDS:

- **that the MELS provide a better definition of the concept of "at-risk" students by more clearly stating the criteria that justify the use of this label by school personnel;**
- **that the MELS produce data pertaining to the proportion of "at-risk" students represented among racialized and immigrant students, and in particular among those who are sent to special classes or remedial schools;**
- **that the MELS break down the data pertaining to "at-risk" students from ethnic and racialized students according to whether they are students with learning disabilities or behavioural problems.**

3.5 WELCOME CLASSES

Welcome classes often represent the first gateway to Québec society, not only for youth from immigrant families, but also for their parents. In fact, the education system is often one of the main channels of integration through which immigrant families become acquainted with the various aspects of their adoptive society, along with the labour market. As we will see in the following paragraphs, although welcome classes are an obligatory passage for newly arrived students, the school system is not always ready to welcome them and respond adequately to their needs, thereby creating systemic discrimination against recent immigrants. Furthermore, because 64% of recent immigrants belong to a "visible minority", according to Statistics Canada[211], this systemic discrimination affects a majority of racialized immigrants.

3.5.1 EDUCATIONAL AND SOCIAL INTEGRATION

Welcome classes are intended to facilitate the educational, language and social integration of allophone students who are newly arrived in Québec. However, it appears that these students are not always offered a framework that corresponds to their profile allowing them to pursue their education in regular classes without academic delay.

During the public consultation, no participant challenged the principle of so-called "closed" welcome classes, but several pointed out certain significant shortcomings associated with this model as it is currently applied in Québec. As was indicated by Armand, Beck and Murphy, "the closed welcome class remains a model that is quite suitable for a large number of students, on condition that the

211 STATISTICS CANADA, 2006 Census data, Product No. 97-562-XCB2006011 in the Statistics Canada catalogue (Québec / Québec, Code 24).

educational team keeps in mind that it constitutes a transition to the regular class and not a parallel course in which too many allophone students are isolated for two or three years."[212] It is evident that plunging allophone students directly into regular classes would reduce their chances of success, because they would have to cope with a number of forms of adaptation simultaneously. More specifically, in addition to the language learning, they must deal with a new school system and new classroom rules. Therefore, it is up to the welcome classes to efficiently equip these students so that they can pursue their route to educational and social integration into regular classes as quickly as possible.

At this time, the Educational Integration and Intercultural Education Policy[213] does not require doing anything with respect to the organizational structure of the welcome sector, but encourages the education sector to innovate and diversify the approaches used in this area. In fact, the obstacle that is most often reported during the consultation deals precisely with how the school is organized with respect this sector. Not only does the integration of allophone students seem to be problematic, but the measures adopted with respect to their success seem to be deficient in a number of ways.

In its brief submitted to the Commission, the Fédération des commissions scolaires du Québec pointed out that the situation related to welcome classes is not homogenous. In fact, several participants also mentioned that the resources and services offered to allophones students and their families were not standardized from one school board to another.

The participants and researchers that have examined the issue of welcome classes point out several factors that interfere with the educational and social integration of newly arrived students. It was suggested that the school boards ought to integrate these students into their neighbourhood school from the outset, instead of sending them to their school board's service point, which is often much farther away from their home. Physical proximity between the student's school and home not only promotes social and educational integration for the student, but also facilitates the development of links with the parents and their involvement in school life.

Finally, as we know, in order to ensure successful integration, it is essential for school personnel to work closely with the parents of newly arrived students. The Commission considers that one of the essential conditions for a successful integration is for the school to take charge of welcoming allophones students and their families. In this respect, it is worthwhile to consider a model that is often cited as exemplary by experts: the one that is applied by the Commission scolaire de la Région-de-Sherbrooke. This model consists of establishing a real welcoming structure that takes into consideration the many facets of the integration process. As soon as the newly arrived student is registered, a team consisting of an education advisor, a psychologist, a teacher and an interpreter has a lengthy meeting with the family and the student in order to better understand their migration route and their family history.

In addition, the various capacities of the student, both cognitive and psychosocial, are evaluated during this meeting. In order to more precisely assess the student's educational level, the welcome team uses the services of an interpreter in order to verify the student's mother-tongue competencies in reading and writing, and thus detect any learning problems. The welcome team uses this meeting as

212 Françoise ARMAND, Isabelle Anne BECK and Tresa MURPHY, "Réussir l'intégration des élèves allophones immigrants nouvellement arrivés", *Vie pédagogique*, No. 52, October 2009, [on line]. www.the MELS.gouv.qc.ca/sections/viepedagogique/152/index.asp?page=dossierD_1 (page consulted on March 14, 2011)

213 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *A School for the Future – Policy Statement on Educational and Intercultural integration,* 1998.

an opportunity to give the parents information concerning the Québec school system, to answer their questions and to calm their fears with respect to the process of integration into a new society.

The Commission considers welcoming immigrant families to be very important, and therefore, encourages the adoption of this initiative, as established by the Commission scolaire de la Région-de-Sherbrooke.

3.5.2 SCHOOL ORGANIZATION

In a report dating from 1996[214], the MELS had already included a number of cautionary remarks about immigrant students that are still relevant today. In this report, the MELS emphasized that intervention with such students must be quick: "They must not be put in a position of failure in the Québec education system and demotivated. Action must also be comprehensive, which means that it must simultaneously involve learning both French and other subjects and promote the development of 'literacy'." As we will see below, the educational difficulties faced by allophone students are as much due to shortcomings inherent in the procedures for welcoming and integrating newly arrived students as to the procedures that provide for the transition from the welcome sector to regular classes.

Even today, the winning conditions that will assure a successful transition from welcome classes to the regular sector continue to be the subject of some dispute. They are even considered to be a sensitive subject in some schools, as reported by Armand, Beck and Murphy: "In the welcome classes for allophones students, their integration into regular classes remains a sensitive zone in the school organization, sometimes generating comments or concerns among the various stakeholders, and even misunderstandings or conflicts in the schools."[215] In fact, faculty apprehension is often related to the anticipated complication of their workload that they fear will be caused by the integration of students from welcome classes into regular classes.

Despite studies that have proven that, within the context of learning a new language, it is important for allophone students to experience immersion by being in real learning situations, some schools persist in not offering at least a partial integration into regular classes right from the start, even if only for the benefit of social integration, as some schools have recognized, integrating these students into physical education and art classes or in various educational projects. Other schools go so far as to open up the classes in order to respond to the path and individual pace of the allophone student, and thus offer gradual integration. Given the variety of needs among newly arrived students, there is a wide range of models of services adapted to these needs and their capacities.

Funding rules previously called for a set stay of ten months in welcome class, but today, there is no longer any prescribed minimum term. Therefore, it is possible for an allophone student who has acquired sufficient language skills to be integrated into regular classes more quickly, with linguistic support where necessary. On the other hand, an allophone student with a significant academic delay and who requires more time and support should be able to benefit from welcoming services extended over a longer period, according to his or her needs.

Furthermore, it seems that there is a connection between the age of entry into the Québec school system and the chances of educational success. As such, the secondary school graduation rate is noticeably higher among students who were integrated into the Québec school system starting in the first year of primary school (68.9%) than for those who entered during the first year of secondary

214 MINISTÈRE DE L'ÉDUCATION, DU LOISIR ET DU SPORT, *Le point sur les services d'accueil et de francisation de l'école publique québécoise: pratiques actuelles et résultats des élèves*", 1996.

215 F. ARMAND, I. A. BECK et T. MURPHY, op.cit., note 212.

school (34.3%).[216] In this respect, the Commission notes that the Education Act already provides students with a handicap with the possibility of obtaining an exemption that entitles them to secondary education services until the age of 21. Similarly, such an exemption could be of great assistance to allophone students with less education who entered the Québec school system when they were older.

In fact, in its *Guide de gestion des allocations relatives aux services aux élèves des communautés culturelles* (2010-2011) [Guide to managing allocations for services to students from cultural communities], the MELS mentions that "the duration of welcome services and services supporting the learning of French depends on the development of the student's language competency, and the form that this support assumes must evolve with the student's needs."[217] A number of participants mentioned to us that this was far from being the case in practice, and that a number of schools offered only closed welcome classes to these students until they were definitively able to integrate into the regular class or, where appropriate, into a remedial class for those who are too far behind.

These same participants also decried the fact that, in many cases, allophone students who were integrated into regular classes generally benefited from a very limited number of hours of support services for learning French, without regard for the severity of their problems. Finally, it appears that teachers in the regular sector are reluctant to accept students from the welcome sector into their class because of the lack of linguistic support in regular classes and the fact that they have little or no preparation for integrating students of this kind.

THE COMMISSION RECOMMENDS:

- **that school boards integrate students from the welcome sector into their neighbourhood school from the outset, rather than sending them to a service point for their school board;**
- **that school boards provide a transition plan that allows each student in the welcome sector to be integrated into regular classes as quickly as possible, in a way that is adapted to their needs and pace of learning;**
- **that the MELS allow for a reduction in the number of students per class when students from the welcome sector are being integrated into regular classes;**
- **that school boards, in collaboration with the MELS, ensure that students from the welcome sector who are integrated into regular classes continue to receive language support adapted to their needs;**
- **that the Education Act provide an exemption that allows allophone students who enter the Québec school system late and have a major academic delay to continue their secondary school education until the age of 21.**

216 M. McAndrew and J. Ledent, op.cit., note 206, p. 51-53. Moreover, according to this study, the graduation rate is higher among immigrant students who were integrated into secondary school in the course of the program (41.2%), rather than at the beginning of the first year of high school (34.3%). The authors point out that more thorough statistical analyses would be necessary in order to explain these results.

217 Ministère de l'éducation, du loisir et du sport, Guide de gestion des allocations relatives aux services aux élèves des communautés culturelles (2010-2011), 2010, p.16.

3.5.3 EVALUATION OF THE LANGUAGE COMPETENCIES OF NEWLY ARRIVED STUDENTS

Another worrying finding with respect to the integration of newly arrived students lies in the fact that the MELS does not impose any specific evaluation of language competencies on school boards, such that there is an enormous disparity in the evaluation methods and instruments used from one school board to the next. It is up to each school board to develop its own evaluation tools and to decide who is responsible for doing so. For example, in some schools, it is the teachers who are entrusted with these tasks, while in others, it is the educational advisors. It may even happen that no test is developed, and that the evaluation of a student's language competencies is carried out in an approximate way, which increases the risks of a decision being made based on discriminatory prejudices.

> In a recent decision by the Court of Québec, a judge ruled that a father of Haitian origin had been the victim of discriminatory treatment — similar to a form of "profiling"[218] according to the judge — because his local primary school had automatically sent his child to a welcome class for the sole reason that he was born in Haiti, without even having taken the trouble to verify the child's language competencies, as provided for by a school board directive.
>
> *Mondestin v. Commission scolaire de la Pointe-de-l'Île*, 2010 QCCQ 10047 (decision to be appealed)

However, it is this evaluation of competencies that will determine the welcome and French support services for each newly arrived student, and that will allow the school boards to claim the necessary funding for this purpose. At the present time, we are told, the evaluation is too often dictated by budgetary logic than by the real needs of the allophone students for linguistic and integration support. Furthermore, in its previously mentioned guide to budgeting, the MELS itself felt that it was important to include a reminder that "the duration of services offered to a student must not in any way be determined by the student's eligibility for the 'adjustment for welcome and French-learning support services."

In light of this, there is reason to ask questions about the autonomy that the MELS gives to school boards with respect to managing the evaluations of the language capacities of allophone students.

THE COMMISSION RECOMMENDS:

- **that the MELS standardize the tools for evaluating the language competencies of allophone students;**
- **that the MELS require school boards to submit to a more detailed accounting of the use and management of funding intended for students receiving welcome and French-learning support services;**
- **that the MELS require school boards to document, with data, the educational path of students from the welcome sector in order to verify the efficacy of the welcome and linguistic support services models;**
- **that school boards introduce initiatives for newly arrived families in order to create optimum conditions for school and social integration.**

218 *Mondestin v. Commission scolaire de la Pointe-de-l'Île*, 2010 QCCQ 10047, par. 160.

3.5.4 EDUCATIONAL TOOLS AND SECOND-LANGUAGE LEARNING

During the consultation, organizations that assist students who have learning difficulties deplored of the segregation of welcome classes in certain schools. They decried the fact that welcome classes were separated, sometimes in an isolated section of the school. The Commission is of the opinion that one can reasonably doubt that such a physical configuration can promote the social and educational integration of these students.

Similarly, these same organizations mentioned the problem of outdated teaching materials for teaching French in welcome classes. The teaching materials that are currently used do not correspond to either the reality or the age group of these students. There were also complaints about the absence of textbooks designed specifically for linguistic, school and social integration of allophone students attending welcome classes. In short, in order to give allophone students the same chances of success as other students, it is essential that the education sector provide welcome services with effective, varied educational tools that correspond to the specific needs of this category of students. Furthermore, it is often forgotten that learning a second language is a slow and complex process that continues even once the student is integrated into regular classes. There are a number of steps involved in learning a second language, and the various school interveners who work with these students must understand the nature of and the order in which theses steps occur. In addition to the complexity of this learning, the newly arrived student must deal with a number of other forms of adaptation, as mentioned above.

> Welcome classes do not seem to be prioritized in terms of resources. The teachers receive no support, become discouraged and transmit their feelings of impotence and failure to their students [...].
>
> Excerpt from the brief from *Services d'aide et de liaison pour immigrants La Maisonnée*

Therefore, it is vital that the various school interveners are not only made aware of the context experienced by these young students, but also that they become aware of the role that they have to play in the integration process. As we were told during the consultation, too many teachers are still poorly prepared for this challenge. In particular, it appears that they are poorly prepared to distinguish between school difficulties linked to learning a second language and those linked to real learning disabilities.

THE COMMISSION RECOMMENDS:

- **that school boards ensure that the teaching tools and educational materials used in welcome classes are adapted to the specific needs, socio-cultural realties and ages of the students in this sector;**
- **that school administrations ensure that there is collaboration between the welcome classes and the regular classes in order to allow for optimum integration of students who move from one sector to the other.**

3.6 Adult education

In this section, we will examine a problem that was brought up often during consultation. Over the past few years, the adult education sector has taken in a growing number of students who have not succeeded in earning their high school diplomas in the time required, including a large number of young immigrants. In its current state, is this sector prepared to welcome these students, who are trying to complete their secondary studies while overcoming their educational or behavioural problems without ever having dropped out? According to several participants, there are good reasons to doubt it.

In the following paragraphs, we will see that the adult sector is currently poorly prepared to meet to the needs of these students, and we will propose certain avenues that enable it to do a better job.

The adult education sector, both general and vocational, was initially designed to allow adult drop-outs to return to school in order to obtain a high school diploma (HSD). In fact, over the last decade, Adult Basic Education (ABE) has witnessed an increase in the number of under 20-year-olds who come directly from the youth sector, without having interrupted their education. Between 2000 and 2009, this number rose from 44,580 to 56,077, an increase of 25.8%.[219] In addition, although "in 2007-2008, 16.4% of the students of a school-age generation went directly from the youth to adult basic education in the adult sector before the age of 20, without even interrupting their education [...], in 1984-1985, this rate was only 1.3%; it has therefore multiplied by 12."[220]

These data confirm what many researchers and participants mentioned during the consultation: that it has now become increasingly common to direct students who are 16 years old and older and who are failing or show serious academic delay to the adult sector, and this includes a large proportion of students are "at-risk". Furthermore, in Montréal, youth with immigrant backgrounds appear to contribute disproportionately to this phenomenon. Thus, citing the MELS figures, Potvin and Leclerq point out that the "constant growth of 16-24 years in ABE since the 1990s is largely due, in the Montréal region, to students from immigrant families."[221] As an illustration, according to the study by McAndrew and Ledent that was cited above, the students from Black communities[222] and from immigrant families[223] who obtain their High School Diploma (HSD) tend to obtain them from the adult sector more often than the school population as a whole.[224] Such data would tend to corroborate the hypothesis that minority youth tend to move directly from the youth sector to the adult sector in order to obtain their HSD more than other students.

Based on this quantitatively succinct description, questions emerge that relate to the objectives of the current consultation and the main findings submitted by participants. From the perspective of an analysis of discrimination, it is important to ask whether there are obstacles of a systemic nature that are inherent in the way the adult education works that would have the effect of penalizing this category of students who go directly from the youth sector to the adult sector and who do not have

219 Maryse Potvin and Jean-Baptiste Leclercq, *Trajectoires sociales et scolaires de jeunes de 16-24 ans issus de l'immigration en formation générale des adultes et analyse de deux projets de "Persévérance scolaire" (2007 et 2009)*, July 2010, p. 6.

220 Ministère de l'éducation, du loisir et du sport, *Indicateurs de l'éducation. Édition 2009*, Québec, 2009, p. 60.

221 M. Potvin and J.-B. Leclercq, op.cit., note 219, p. 14.

222 M. McAndrew and J. Ledent, op.cit., note 203. In the study by McAndrew and Ledent, students from Black communities are students born in the Caribbean or Africa or whose parents were born in the Caribbean or Africa and whose mother tongue can be English, French, Creole or an African language.

223 *Ibid.*, op.cit., note 206 In the McAndrew and Ledent study, the youth from immigrant families are those born abroad or whose parents were born abroad, excluding the students of the Black communities as defined in the previous note.

224 *Ibid.*, p. 29.

the typical profile of the adult "returning student", who goes back to school after spending time in the work force. Is the adult sector adapted to the varied needs of this new clientele? This question is all the more relevant to this report, because youth of racialized minorities and from immigrant families are over-represented in ABE.

Finally, it is important to ask whether the adult sector can respond to the francization and integration needs of youth who immigrated to Québec at a relatively late age and who moved from welcome classes to the youth sector.

3.6.1 HARMONIZING THE YOUTH AND ADULT SECTORS

First of all, it was pointed out that there are no procedures in place for harmonizing the youth and adult sectors that would make it possible to ensure an efficient transfer of the records of students from the youth sector. As a result, Adult Education Centres (AEC) are not in a position to take account of information concerning the educational needs and school problems identified by the secondary schools, and particularly any action plans. In addition, the classification tests given upon entry by the adult sector do not take into consideration classifications and evaluations made earlier in the youth sector. Given that the two sectors make parallel classifications, it means that the two systems involved operate in isolation from each other, whereas they should be complementary to each other. Therefore, it is by no means rare for there to be substantial differences between the classifications made by the two sectors.

The Commission is aware that the lack of these harmonization procedures is largely due to the fact that the adult sector was not originally designed to accommodate a clientele of students in difficulty from the youth sector. On the other hand, because this category of students now accounts for an ever larger percentage of the clientele in the adult sector, it is vital for school boards to harmonize the evaluation tools used in both sectors in order to minimize the risks of downgrading.

THE COMMISSION RECOMMENDS:

that school boards ensure that the Adult Education Centres take better account of the classifications made in the youth sector and of the information on educational needs and school difficulties recorded by secondary schools, and particularly of intervention plans.

3.6.2 SCHOOL ORGANIZATION

The approach preferred in the adult sector, which consists of individualized and personalized teaching, does not necessarily suit all types of students. Such an approach may suit adults who return to school and who, it may be thought, demonstrate greater maturity and autonomy. In fact, this clientele in the adult sector appears to appreciate the autonomy and flexibility, the modular learning (rather than lecture courses), the more personalized instructional support, the individual study pace and the smaller classes that are characteristic of adult learning.[225]

On the other hand, the adult education approach is a much less ideal approach for youth who are not very autonomous, and therefore, have greater need of supervision, or for those with greater learning

225 Nadia ROUSSEAU et al., "L'éducation des adultes chez les 16 à 18 ans. La volonté de réussir l'école... et la vie", *Éducation et francophonie*, vol. XXXVIII, n° 1, spring 2010, p. 154-177.

difficulties. In fact, such youth are less likely to benefit from the many specialized instructional support and specialized resources they need and were receiving in the youth sector. In spite of their good will and efforts, teachers in the adult sector are not trained to respond to the specific needs of these youth, and even if they were, the school structure used in the Adult Education Centres does not allow them to respond easily to such needs. In fact, the adult education approach underlying the ABE was not designed for young students, who are expected to act like adults, but who are not prepared for so much autonomy.[226]

In addition, students in ABE who have learning or behavioural problems — which is the case for the majority of those who move from one sector to the other without interrupting their schooling — have an even greater need of adapted instructional support and specialized resources, either in the form of specialized school workers or professionals who deal with psychosocial disorders. Unfortunately, such resources and the adapted instructional support that these young students require is substantially lacking in the adult sector.

This is not intended to suggest that the adult sector must be completely redesigned in the image of the youth sector, but rather that it would benefit from an adaptation that takes into account the educational and instructional needs of this new clientele consisting of students in difficulty who arrive directly from the youth sector[227].

THE COMMISSION RECOMMENDS:

that the MELS ensure that students with special needs who attend Adult Education Centres can benefit from an instructional services that is adapted to their needs.

In a related area, both researcher Maryse Potvin and TCRI (consisting of organizations serving refugees and immigrants) pointed to the same aspect of the administrative structure of the adult sector that appears to disadvantage students coming from regular school. Their point is that ABE funding is mainly calculated as a function of the number of hours of student attendance in class. Therefore, attendance is compulsory and recorded, and repeated absences are punished by expulsion. Although such a formula may be entirely appropriate for mature, autonomous adults who are motivated to succeed, it is much less so for 20 year-old and younger students who arrive from secondary school unmotivated and struggling with learning or behavioural problems. Because they are left to themselves, these students, who need more structured supervision, risk accumulating absences, and thus are at risk of being expelled from their program. In fact, it appears that repeated absences is one of the reasons most commonly given by students in the adult sector to explain why they are leaving school, along with having found a job.[228]

THE COMMISSION RECOMMENDS:

that school boards revise the method for funding Adult Education Centres so that they are no longer given an incentive, even indirectly, to punish repeated student absences with expulsion.

226 M. POTVIN et J.-B. LECLERCQ, op.cit., note 206, p. 34.

227 At the same time, we note that the youth sector should restructure the services for students with serious difficulties (e.g.: academic delay, inadequate mastery of French, learning impaiments, etc.) in order to better respond to their needs, and thus maximize their chances of earning their HSD at regular school.

228 N. ROUSSEAU et al., op.cit., note 225.

3.6.3 FRANCIZATION PROGRAMS

Finally, during the consultation, Maryse Potvin and TCRI drew the Commission's attention to the fact that the adult sector is not well-equipped to respond to the needs of young immigrants who have spent time in the welcome classes in the youth sector in terms of francization and integration. In fact, this clientele seems to be largely over-represented in the ABE. Based on the available data, Potvin and Leclerq conclude that "one might think that a rather large proportion of youth 16-24 years old with immigrant backgrounds, having accumulated some academic delay in the GEY sector because of their time spent in welcome classes (francization or the Welcome and Assistance in Learning French Program) and late entrance in the Québec school system, will wind up in ABE."[229] All studies demonstrate that the later a young immigrant enters the Québec school system, the greater that his or her chances of developing an academic delay that will be hard to make up later, which would account for the fact that a number of them move into the adult sector starting at age 16.

AECs offer many programs for literacy and francization, but these are mainly intended for older immigrants who are seeking to obtain a mastery of French oriented toward social and vocational integration. The needs of younger immigrants, those 20 years old or younger, are not met by these programs. According to certain interveners from the adult sector, they do not need to take French classes focused on socio-vocational insertion as much as they need to perfect their mastery of a more "literary" French that is better adapted to the school subjects required for obtaining their HSD.[230]

THE COMMISSION RECOMMENDS:

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that school boards ensure that the adult sector establishes francization programs that are better adapted to the needs of young immigrants, meaning courses that are adapted to mastering the subjects required for obtaining their HSD.

3.6.4 THE YOUTH SECTOR AND EDUCATIONAL SUCCESS OF STUDENTS IN DIFFICULTY

Based on the foregoing, it appears that the adult sector does not always have the required resources to respond to the needs of students in difficulty from the regular sector.[231] That is why, in the preceding sections, the Commission recommended that school boards make the necessary changes to the Adult Education Centres in order to make them better suited to meeting the educational needs of this new category of students, which includes a large proportion of immigrants. Such an approach is necessary, because the number of students in difficulty moving directly from the regular sector to the adult sector does not seem likely to decline in the immediate future, but rather to grow.

That being said, it is as much the responsibility of the MELS and the school boards to devise solutions for the future that will increase the chances of success and thus of graduation rate of students with adaptation problems or learning disabilities who are in the regular sector, if not more so. In addition, the regular sector has a legal responsibility to deploy educational services that are appropriately adapted to this situation.[232] The Commission is aware that achieving such an objective is not easy and that the methods for doing so are varied and involve numerous considerations.

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229 M. POTVIN and J.-B. LECLERCQ, op.cit., note 206, p. 20.

230 Maryse POTVIN, brief submitted to the Commission, p. 9.

231 There is nothing surprising about such a finding, because this sector was not designed to meet the needs of this clientele, having instead the mission of enabling adult drop-outs who were already part of the workforce to obtain the qualifications required to make their plans for advancement or vocational reorientation come true.

232 *Education Act*, R.S.Q., c. I-13.3. In particular, sections 96.14, 185, 234 and 235.

Without thoroughly examining these complex issues, we would nevertheless like to mention that, during the consultation, Professor Maryse Potvin and TCRI suggested that secondary school students be allowed to remain in the regular sector until the age of 21 in order to obtain their HSD, as it is done in other Canadian provinces. Currently, students have the right to attend the regular sector until the age of 18, except for disabled students, who, under the Education Act, are entitled to remain until age 21. Although the Commission recommended in Section 2.5.2 above that this exemption be applied to allophone students who entered the Québec school system late and who have a serious academic delay, it does not feel qualified to speak to the relevance of extending this measure to all students with difficulties.

THE COMMISSION RECOMMENDS:

that the MELS, in collaboration with the school boards, take the steps necessary to enable students in difficulty to obtain their secondary school diploma in the youth sector, to the extent possible, and thereby reverse the current trend of secondary schools guiding this category of students to the adult sector.

3.7 TRAINING AND HUMAN RESOURCES

3.7.1 TEACHER TRAINING

The importance of acquainting future teachers with an education philosophy and teaching method that integrates the major principles of the antiracism approach and of intercultural intervention was mentioned by participants on numerous occasions. In fact, both researchers and interveners from the education sector asserted that teachers are not sufficiently well-trained in the principles of intercultural and antiracism education. This means that faculty members are poorly prepared to work in multicultural schools and classes. According to researcher Josée Charrette, who participated in the consultation, this deficiency has been noted and deplored by the elementary teachers themselves who, she writes, believe that they are "not prepared to receive culturally different children in their class."[233]

In fact, everyone agrees that the solution must necessarily, but not exclusively, involve the basic and continuing education of teachers in particular, and of school personnel. With respect to the current situation involving continuing education, the MELS and the school boards devote significant effort each year to providing interculturalism training to school personnel, in collaboration with university researchers and various organizations. However, it is important to note that such training is not compulsory, and that there is no guarantee that it has actually been given to a significant proportion of the faculty and other members of the school staff working in culturally diversified settings.

Given the multiple and varied professional development needs, it may appear to be difficult to require school staff to follow intercultural and antiracism training. However, the Commission considers that, at the very least, the main principles of this approach should be taught as part of a compulsory course given to all students who are studying to be teachers. This would ensure that future teachers, regardless of the socio-educational setting in which they later work have acquired at least the foundations of the intercultural and antiracism approach by the end of their university program. In fact,

233 Josée CHARRETTE, *Représentations du racisme et pratiques inspirées de l'approche antiracisme chez des enseignants du primaire,* Master's thesis presented to the Département de psychopédagogie de la Faculté des sciences de l'éducation of the Université de Montréal, April 2009, p. 146.

the Commission notes that, at the present time, not all teacher training programs include a compulsory course that addresses these issues.

Furthermore, in a 2006 brief,[234] the Commission expressed its concern that, even when they introduce students to the intercultural approach in education, teacher training programs offered in Québec tend to side-step the problems of racism and discrimination. Therefore, interethnic relations are neither set in their historical context nor explained in light of the power relationships between the majority group and minorities.[235]

In light of this, it is important that teacher training explicitly include not only intercultural competencies, but also the principles of the antiracism approach. These objectives should have been included in the teacher training document that was published by the ministère de l'Éducation du Québec (MEQ) in 2001: *Teacher training. Orientations. Professional Competencies,* which is intended to define the orientations and learning objectives that faculties of education are required to reflect in their teacher training programs. From this perspective, the antiracism approach should also have been better integrated into the intercultural training sessions given to teachers who are already working in schools.

THE COMMISSION RECOMMENDS:

- **that faculties of education include compulsory courses or training on antiracism and intercultural education in their basic teacher training programs, and that school boards include them in their continuing education programs;**

- **That the MELS, in its publication** *Teacher Training. Orientations. Professional Competencies* **(MEQ, 2001) add a thirteenth competency to the twelve professional competencies that future teachers must acquire: the capacity to become engaged in a process of openness to diversity using an antiracism and intercultural approach.**

3.7.2 RECRUITING A DIVERSIFIED STAFF

A number of participants in the consultation asserted that one of the strategies that would contribute to making schools a discrimination-free environment would be to ensure that the ethnocultural profile of the teachers and specialists (e.g.: remedial teachers, speech therapists, etc.) better reflect the diversity that characterizes the school clientele in regions and schools with high ethnic concentrations. Not only would a school staff who better reflects the ethnocultural diversity of the students be better equipped to take into consideration the needs specific to such students, but students from immigrant families would have models of success and inspiring authority figures with whom they could identify more easily.

As was pointed out in the "General Context" section, although school boards are required to institute EAEPs (Equal Access Employment Programs) pursuant to the Act respecting equal access to employment in public bodies, many primary and secondary schools do not achieve their representation goals. Furthermore, in Montréal, these legal objectives, which fluctuate between 7% and 8% for teaching positions, are largely insufficient in terms of providing an adequate reflection of the ethnocultural diversity of most Montréal schools.

234 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 15., p. 15-17.

235 *Ibid.*

The problem is that, for a number of job categories in the education sector, and particularly for teacher positions, the pool of members of ethnic and racialized minorities who are qualified to apply is very limited. In order to remedy this problem, the faculties of education of the universities ought to take steps to increase the representation of minorities among their students. To this end, these schools could establish "Equal Access Employment Programs", pursuant to section 86 of the Charter. We know of at least one precedent: Collège Ahuntsic applies an equal access employment program to its police technology program. It explains its reasons for doing so on its website:

> "In order to enable the various police departments, particularly in the Montréal region, to provide better representation of various social, cultural and racial groups among their employees, Collège Ahuntsic is part of an equal access employment program. This program applies to women, members of ethnocultural minorities, members of visible minorities and Aboriginals."[236] (emphasis added)

The Commission considers the example of Collège Ahuntsic to be one that should be followed by faculties of education in order to expand the pool of members of ethnic and racialized minorities who are qualified to teach, and thus enable the schools to assure a more adequate representation of these groups among their personnel. Finally, the faculties of education should plan recruiting campaigns, including such incentive measures as scholarships, with a view to convincing members of ethnic and racialized minorities to opt for a university education leading to teaching at the preschool, primary and secondary school levels.

THE COMMISSION RECOMMENDS:

- **that faculties of education establish Equal Access Employment Programs designed to increase the representation of members of ethnic and racialized minorities among their teacher training students;**
- **that faculties of education conduct recruiting campaigns, including incentive measures like scholarships, designed to convince members of ethnic and racialized minorities to opt for university programs leading to teaching at the preschool, primary and secondary school levels.**

236 For more details, [on line]. http://www.collegeahuntsic.qc.ca/public/7e1f5c75-1d2e-429e-8dc70c9373d8a53c/documents/tech-policieres/acces-egalite.pdf (Page consulted on January 20, 2011)

4. THE YOUTH PROTECTION SYSTEM

In this section, the Commission will consider ways of minimizing the impacts of prejudices, stereotypes, generalizations and even analysis grids and organizational policies that do not take into account cultural differences on decisions made by social workers in the youth protection system and by professionals who are asked to report situations that require intervention.

Such a problem can, and even must, be analyzed from the perspective of racial profiling. In fact, as is the case with the application of laws and by-laws by police forces, or of codes of conduct by school personnel, the decisions made in application of the Youth Protection Act[237] (YPA) are made by persons in a situation of authority for reasons of safety and protection, and are likely to be based on factors such as real or assumed membership in an ethnic or racialized minority, the consequence of which can be to submit the youth concerned and their families to discriminatory differential scrutiny or treatment.

Furthermore, as in the education sector, a number of participants, including the Association des centres jeunesse du Québec (ACJQ), asserted that the over-representation of youth from Black communities in the protection system cannot be reduced to an issue of racial profiling. For this reason, an analysis of profiling in this sector must be combined with an analysis of systemic discrimination. As such, as a number of participants insisted, those involved in the system must also be able to count on solid intercultural and antiracism competencies in order to take the cultural specificities of their clientele into consideration. Moreover, the YPA stipulates that those who are involved in the youth protection system have an obligation to apply measures with the child and their parents that take into consideration the characteristics of "cultural communities" and "Aboriginal communities" in their interventions.[238]

In addition, aside from discriminatory mechanisms specific to the protection system that can fuel in over-representation, the analysis must also take into consideration the fact that the concentration of poverty among racialized groups increases the risks of neglect, and consequently, the risk of reports to the Director of Youth Protection (DYP). These concerns were raised regularly during the consultations, and must also be considered. In many respects, the indicators of neglect correspond to the indicators of poverty. In order to be convinced, it is sufficient to examine the forms that parental neglect can assume within the meaning of section 38 of the YPA:

"(b) "neglect" refers to

(1) a situation in which the child's parents or the person having custody of the child do not meet the child's basic needs,

(i) failing to meet the child's basic physical needs with respect to food, clothing, hygiene or lodging, taking into account their resources;

(ii) failing to give the child the care required for the child's physical or mental health, or not allowing the child to receive such care; or

(iii) failing to provide the child with the appropriate supervision or support, or failing to take the necessary steps to provide the child with schooling".[239]

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237 R.SQ., c. P-34.1.

238 *Ibid.*, sec. 2.4, par. 5 (b) and (c).

239 *Ibid.*, sec. 38.b.

The definition of what constitutes parental neglect that can endanger the security or development of a child within the meaning of the YPA closely reflects the traditional indicators of poverty, understood in both the material (few financial resources) and symbolic (little educational and social capital) meanings. The Commission recently noted that "nearly one child in four is currently living in poverty in Québec [...] [and that] the consequences of such a situation are detrimental to the development of these children; they are more likely to experience food insecurity, suffer psychological distress, mistreatment or neglect as well as academic lag, and dropping out without a high school diploma."[240]

The fact that poverty creates conditions that can lead to situations where parents may be deemed unfit may account in part for the disproportionate contacts of young Blacks with the youth protection system. Whatever indicator is used, Black communities in Québec experience greater rates of disadvantage, not only when compared to persons not belonging to a racialized minority, but also compared to other racialized minorities.[241] In fact, in a comparative analysis, researcher Esther Belony concludes that the "over-representation of children from Haitian immigrant families is obviously the product of a cumulative disadvantage that puts them at greater risk of being taken into care by the DYP than the children of other families. Thus, children of Haitian immigrant families can be described as 'victims' of the precarious socio-economic conditions in which their families live."[242]

In the following paragraphs, the Commission will first provide a succinct review of the existing data pertaining to the over-representation of young Blacks and young immigrants in the youth protection system. Second, based on briefs submitted during the public hearings, the Commission will draw attention to certain mechanisms or factors, whether inherent or external to the protection system that may compromise the right of youth from minorities to equality, as well as possible solutions to correct the identified problems.

4.1 Context and issues

In Québec as elsewhere in Canada and the United States, youth from Black families, as well as those from Aboriginal communities, are over-represented in the youth protection systems. With respect to aboriginal youth, a study revealed that their presence in the youth protection systems across Canada (30-40%) in 2000-2002 was at least six times higher than their weight in the Canadian population (5%).[243] In Québec, a study by Léonel Bernard and Christopher McAll revealed that, based on data from 1997, young Quebecers of Haitian origin under 18 years old were twice as likely to be reported to the DYP as young Quebecers of French Canadian origin, and that healthcare and school professionals constituted the primary sources of these reports, whereas youth from the majority were reported first and foremost by their immediate or extended family.[244] Bernard and McAll also noted that, compared to youth of French Canadian origin, youth of Haitian origin were more often given a priority urgency code in the processing of their files (22% versus 16%), were more often removed from their family on an emergency basis when the report concerning them was accepted (59% versus 45%), and were twice as likely to not return home thereafter. Finally, their situation was more often referred to the court system (68% versus 52%), and more of them were placed in care (65% versus 50%).[245]

240 Commission des droits de la personne et des droits de la jeunesse, op.cit., note 7.

241 See: James Torcyner, "Inégalité dans la main-d'œuvre : conclusions préliminaires du Projet d'études démographiques sur les communautés noires montréalaises," dans Eid. P., (dir), op.cit., note 195, p. 161.

242 E. Belony, op.cit., note 24, p. 118.

243 Pamela Gough, Nico Trocmé, Ivan Brown, Della Knoke and Cindy Blackstock, "Pathways to the overrepresentation of Aboriginal children in care," Centre of Excellence for Child Welfare, 2005. [on line], www.cecw-cepb.ca/sites/default/files/publications/en/AboriginalChildren23E.pdf (Page consulted on November 12, 2010)

244 Léonel Bernard and Christopher McAll, "Pauvreté et 'protection'", *Revue du CREMIS*, fall 2009, p. 26-30, p. 27.

245 *Ibid.*, p. 27.

In some areas, the Bernard and McAll data were contradicted or qualified by the results of a more recent study conducted by Chantal Lavergne, Sarah Dufour and their colleagues, which involved all of the children with respect to whom reports were accepted by the DYP in 2007-2008.[246] This study confirmed that, compared to other children, young Blacks are nearly twice as likely to be reported. As for "Caucasian" youth, they were under-reported to the DYP, given their weight in the population, as were those of racialized minorities other than Black. Reports from professionals in the education, health and social services sector are more prevalent in the case of Black (83%) and other-than-Black (85%) racialized minorities than for young Whites (75%).

However, contrary to the Bernard and McAll study, the study by Lavergne and colleagues did not detect any significant difference between the three groups white respect to the proportion of cases in which the facts alleged in the report were corroborated during evaluation. Their study actually made it possible to see that the corroboration rates — or in other words, the proportion of cases where the allegations reported turned out to be true upon evaluation — are more or less similar for Blacks (78%), Whites (80%) and visible minorities other than Blacks (79%). On the other hand, when the alleged facts were corroborated, young Blacks and those of other visible minorities required protection services less often than White youth[247], which means that, in their case, redirection toward family support services offered by the CSSS (centres de santé et de services sociaux) was deemed preferable to having the child taken into care by the DYP.

In addition, when the DYP takes a child into care, white children are slightly more often placed in care than black children and those of other visible minorities (32%, 29% and 24%, respectively). It should be noted that these results are partly due to the fact that the parents of white children and youth have much greater psychosocial risk factors associated with mistreatment or neglect than those of families of young Blacks or racialized minorities other than Blacks. A more detailed statistical analysis indicated that, after taking into account the impact of the "parents' characteristics" and "gravity of alleged facts", the rate at which protection services are required by Whites and Blacks are similar. Such an observation led the authors of the study to conclude that "it is not ethnocultural identity that affects this decision, but rather the characteristics of the situation."[248]

The study cited above also reveals significant differences between the three groups in terms of the reasons for reporting. Looking only at the cases where the report is based on a single reason[249], the most frequent reason among young Whites is "neglect" (25%), whereas for young Blacks (29%) and those of other visible minorities (23%), it is "physical abuse."[250] The authors point out that, in the case of racialized minorities, situations of physical abuse, which are the reason for the largest number of reports, "appear to be very closely associated with disciplinary methods and educational standards different from those approved by the majority group."[251]

What should be retained from the study by Lavergne and colleagues is that, unlike young Whites

246 Chantal LAVERGNE, Sarah DUFOUR, Janet SARNIENTO and Marie-Ève DESCÔTEAUX, "La réponse du système de protection de la jeunesse montréalais aux enfants issus des minorités visibles," *Intervention*, No. 131, (winter 2009), p. 233-241.

247 *Ibid*, p. 238. The proportion of cases in which the DYP recommended protection services after evaluation and orientation is 62% for Whites, 55% for Blacks and 52% for visible minorities other than Blacks.

248 C. LAVERGNE, S. DUFOUR, J. SARNIENTO et M.-È. DESCÔTEAUX, op.cit., note 245, p. 239.

249 In the case of co-occurrence, when a child is reported for more than one reason, the study does not indicate the nature of the cumulative grounds.

250 Sarah DUFOUR, Chantal LAVERGNE, Ghayda HASSAN, Florente DEMOSTHÈNE et Gérald SAVOIE, *Diversité culturelle et mauvais traitement envers les enfants. Savoirs et pratiques,* PowerPoint of the 10th "Winter Conference given by the authors on March 26, 2010, [on line]. www.centrejeunessedeMontréal.qc.ca/recherche/PDF/Conferences/diversite_culturelle_2010.pdf (Page consulted on November 14, 2010), p. 27.

251 C. LAVERGNE, S. DUFOUR, J. SARNIENTO and M.-È. DESCÔTEAUX, op.cit., note 246, p. 240.

and youth from racialized minorities other than Black, youth from the Black communities are greatly over-represented in the youth protection system, taking into account their weight in the population. The source of this over-representation is reporting. It remains stable at the evaluation stage, but is somewhat reduced at the orientation stage. However, we should remember that Blacks are less often the object of protection measures, especially withdrawal from the family, than Whites and those of racialized minorities. The authors use their data to support the conclusion that there exists among professionals in the healthcare, education and social services sector an "*a priori* [attitude] unfavourable to Blacks" in the identification of situations where the rights of the child are at risk, a bias that the evaluation and orientation process of the DYP appears to be less likely to reproduce."[252]

The Commission is of the opinion that, although the data actually suggest that an important part of the problem of the over-representation of young Blacks in the protection system is attributable to the difference between perceptions and reality of the adults making a report, it should not prevent youth centres from making a critical examination of their interventions and practices in order to ensure that they are free of discriminatory biases based on criteria, unrelated or even contrary, to the best interest of the child. It is also important to note that some youth centres have already begun to review their intervention practices and procedures in light of the principles of the intercultural approach, and have, to varying degrees, taken concrete steps along these lines. These initiatives must be acknowledged, but throughout the consultation, a number of participants pointed out certain practices that need correction or improvement, along with a lack of uniformity in terms of the services offered by the youth centres. In this area, the Commission heard a number of promising solutions, which will be discussed in the next section.

4.2 Raising awareness among professionals who make reports

The Commission, with its mission of ensuring respect for the rights of the child as guaranteed by the Charter and the YPA, is in a good position to recognize that reporting youth whose security or development appear to be in danger to the DYP is an obligation that is imposed upon professionals in the education, healthcare and social services networks.

Above all, it is vital to remember that the Commission, like the DYP, subscribes to the principle that, when in doubt, it is always in the best interest of the child to report. However, a number of participants in the consultation deplored that education, healthcare and social service professionals tend to make reports to the DYP more often in the case of young Blacks than other youth.[253] According to these same participants, among the factors that explain these statistical discrepancies is a form of racial profiling. More specifically, some adults who make reports from the education and healthcare community are said to have a greater tendency to prejudge a situation of physical abuse or neglect on the basis of unfounded suspicions or misinterpreted signs when dealing with youth from Black communities.

According to this hypothesis, prejudices and ethnocultural stereotypes can lead to a distorted interpretation of a situation by healthcare and education professionals based on the available information. In addition, it is even possible that these professionals sometimes come to a conclusion that is accurate in factual terms, but that they may have judged too quickly that the situation needs to be brought to the attention of the DYP. This may explain why, in the case of reported young Blacks,

252 *Ibid.*

253 *Ibid.*, op.cit., note 241, p. 238. Note that this over-representation is confirmed by the data taken from the study.

sometimes, the alleged facts are founded but the DYP does not consider protection measures to be necessary.[254]

In addition, as the ACJQ pointed out in its brief, the fact that corporal punishment is more commonly used as an educational or disciplinary method among some ethnocultural minorities might account, in part, for the tendency of professionals to over-report youth from these groups to the DYP for that reason. When there is physical abuse, the healthcare and education and social services professionals are obliged to make a report if they have reason to believe that the security of the child could be in danger, and to leave it up to the DYP to verify whether the alleged facts are founded or not.

Although the Commission subscribes to this precautionary principle, it would like education, healthcare and social services professionals to acquire better intercultural and antiracism competencies, and thus be better able to recognize the signs that justify a report. The goal would be to equip them in such a way as to minimize doubts generated by ignorance or misconceptions about cultures that are foreign to theirs. This would require the inclusion of an intercultural and antiracism approach in their training.

It was noted on a number of occasions that healthcare, education and social service professionals too often tend to believe that, in order to intervene with racialized clienteles, they have to master the "code" or the "DNA" of the communities concerned, which is perceived as being homogenous entities for whom it will be enough to learn their distinctive traits in order to understand their essence. It is true that, in some cases, it is useful or even necessary to consider cultural differences in order to arrive at a correct interpretation of a situation. However, culturalist explanations have their limits, because they run the risk of being reductive.

In this respect, the Commission subscribes to the idea that was frequently brought up during the consultation to the effect that good intercultural and antiracism training should also contribute to deconstructing certain analysis grids used in the case of racialized families, often unconsciously, that cause professionals to ascribe excessive weight to real or assumed cultural differences in explaining observed behaviours and attitudes. In this respect, it would be useful if healthcare, education and social service professionals had a better understanding of the factors used by the DYP to evaluate the risks of mistreatment or neglect. They could then rely on real signs that the rights of the child or the youth were in danger when deciding whether to report a child or youth, as the validity of these factors are founded and reliable, regardless of the ethnocultural origin of the child or youth.

Several individuals also indicated that, whether racialized or immigrant families are involved, persons making reports to the DYP tend to overlook the effect of socio-economic inequalities in their evaluation of the situation, again as the result of culturalist readings. Such a trend is particularly harmful for racialized families or recent immigrant families, because a high proportion of them live in difficult socio-economic conditions.

THE COMMISSION RECOMMENDS:

that the ministère de la Santé et des Services sociaux (MSSS), in cooperation with the ministère de l'Éducation, du Loisir et du Sport (MELS) provide professionals in the education, healthcare and social services sector with intercultural and antiracism training designed to reduce incorrect readings of the family dynamics prevalent among youth of racialized and immigrant minorities;

254 *Ibid.*, p. 238-239.

- **that the CSSS, in collaboration with youth centres and experts who specialize in intercultural and antiracism intervention, take on a leading role in establishing this training.**

4.3 COMMUNITY AND FIRST-LINE SERVICES IN SUPPORT OF DYP INTERVENTIONS

One of the key ideas that resulted from the consultation is the importance for the DYP, when intervening with cultural minorities, to be able to rely on community resources and first-line services at every stage of handling files. Although this type of partnership is desirable regardless of the ethnocultural origin of a family with whom the DYP intervenes, it is especially important in cases of immigrant or racialized families, because it enables the interveners in such cases to benefit from proven expertise in intercultural intervention, and to avoid making decisions based on discriminatory biases caused by prejudices or misconceptions.

The Commission entirely supports such an approach, and in the following paragraphs, will point out the good practices in this area that were brought to its attention and that deserve wider adoption. It will also propose certain measures that were suggested during the public hearings that would improve current practices.

4.3.1 INTERCULTURAL CONSULTATION

With respect to intercultural intervention, the most common form of collaboration between the DYPs and the external organizations seems to be intercultural consultation. This type of consultation is designed as much to ensure that the DYP's intervention is well adapted to the cultural specificities of various minority groups as to ensure that it is not guided by abusive generalizations and prejudices that would mask the individual characteristics of the child or youth and the family involved.

In areas where immigrant or racialized populations are concentrated, particularly in Montréal and the Montérégie, the social workers at the youth centres already solicit, intercultural expertise from outside to varying degrees, most often from community organizations, in order to inform the decisions that are made at one of the stages of their intervention. However, this type of initiative is more the exception than a generalized practice based on institutionalized procedures. On the other hand, it should be noted that the Centre jeunesse de Montréal-Institut universitaire (CJM-IU) has developed indicators designed to allow social workers to evaluate the necessity of an "ethnocultural consultation [..] as soon as possible and on an on-going basis".[255] Such a practice is undoubtedly beneficial, in that it contributes to alerting DYP social workers, at all stages, to the presence of signs indicating that an intervention seems to have reached an impasse in communication or otherwise, as the result of certain cultural misunderstandings or fixed and reductive cultural readings of the situation.

THE COMMISSION RECOMMENDS:

- **that DYPs develop indicators that allow their social workers to assess the situations for which an intercultural consultation with an expert is required at each step in the youth protection system.**

255 Jean-Marie DAIGNEAULT, "L'intervention auprès des enfants et des familles issus de l'Immigration. Un processus clinique sensible à la réalité ethnoculturelle," *Défi Jeunesse*, vol. XVI, No. 3, May 2010, p. 18-22, p. 22.

4.3.2 THE IMPORTANCE OF PARTNERSHIPS

A number of participants asserted that, over and above intercultural consultation, the DYPs should establish multidisciplinary and intersectorial teams, in addition to the DYP social workers, representatives of first line services and community groups. Although this type of partnership is generally beneficial for all the types of DYP clienteles, it is especially so for racialized or immigrant minorities. In addition, it is relevant for the DYP to turn to these specialized teams as needed during every step of the process. Among the benefits associated with the establishment of partnerships between the DYP, community organizations and first-line services working with migrant or racialized families, are improved intercultural understanding, a better reading of the situation, and a response that is more adapted to the needs of the families involved.

During the consultation, representatives of the Batshaw Youth and Family Centres (Batshaw) mentioned the existence of this type of partnership within their institution, and emphasized that such a strategy allows for an integrated intervention that better supports the needs of immigrant or racialized families. As for CJM-IU, it also occasionally creates partnerships with the community and the CSSS in order to better integrate the intercultural dimension into its work. However, such practices are rarely institutionalized, which means that these collaborations depend on the good will of the social worker overseeing the case, and have to be renewed on an *ad hoc* basis.

At this point, the Commission would like to acknowledge a very good example of a partnership, that was reported by Centre jeunesse de la Montérégie. In 2009, it signed a service agreement with the CSSS serving its territory and the Maison internationale de la Rive-Sud (MIRS), a community organization devoted to supporting the integration of new arrivals and intercultural understanding. The agreement, a copy of which was obtained by the Commission, specifically provides that MIRS would receive funding form the Centre jeunesse, not only for providing interpretation and intercultural mediation services for the social workers as required, but also for collaborating on consultation meetings and attending case conferences during which action plans are discussed, and at "review and orientation groups in order to determine the needs, objectives and means to be prioritized with immigrant families."

To those who would object that the DYP would not have time to mobilize its partners for quick intervention in emergency situations, we would mention that the service agreement between Centre jeunesse de la Montérégie and its partners stipulates first that, in an "emergency situation, a telephone referral can trigger the intervention process" and second, that the community organization involved (MIRS) "agrees to begin its services within a period of 48 hours."

For the Commission, this type of partnership with first-line services and the community aimed at adapting protection services to a diversified clientele constitutes a very promising initiative that would benefit from being copied. However, it is important to note that partnerships of this type are currently the exception rather than the rule.

In the following paragraphs, the Commission will point out the benefits of a form of multidisciplinary and intersectorial intervention at various steps of the protection system, while providing examples of good practices in this area that were discussed during the public hearings.

4.3.2.1 Receipt and processing of the report

The creation of a multidisciplinary and intersectorial team as described above is useful as soon as a report is received. The DYP can then work in collaboration with its partners to more efficiently identify

the services that the youth and the family require. The social workers would then be better able to assess whether the DYP ought to continue to process the file, or whether the family should instead benefit from assistance provided by the community organizations or by the CSSS specifically in order to facilitate its socioeconomic integration, meet the primary needs of the children, or modify certain educational practices in order to bring them into compliance with the law.

The LaSalle Community Prevention Project

During the consultation, Batshaw brought to our attention an especially interesting experiment in partnership with the community and the healthcare and social services sector in order to prevent children from being placed in the care of the DYP. This is the LaSalle Community Prevention Project, which involves Batshaw, the Boys' & Girls' Club of LaSalle and the Dorval-Lachine-LaSalle CSSS. Among the objectives underlying this project, which was established between January 2005 and December 2009, is the desire to provide services that are adapted to the needs of Black families who are in contact with the DYP, in particular by promoting the search for solutions that, where possible, are compatible with family norms and respectful of parental authority. Among the other objectives that are worthy of mention is a desire to recognize the role and expertise of the extended family in finding solutions.

Following reception of the report and its processing, the youth and his or her family were referred to the intervention team which immediately became involved. The innovative aspect of such a project lay in the fact that Batshaw collaborated with its partners in order to change, wherever possible, the behaviours or the problematic family context, and thus avoided having the report maintained. Between 2005 and 2009, 113 families in which one or more children were the subject of a report accepted by Batshaw participated in the LaSalle Prevention Community Project. Of these, 90% were able to avoid having their child taken into care by the DYP as a result of this intervention,[256] and only 10 children were removed from their families.

In 2008, the ACJQ awarded Batshaw a prize for excellence in the "Clinical Intervention Experiment" category for the LaSalle Prevention Community Project. In fact, in its brief submitted to the Commission, Batshaw pointed out that, despite its undeniable success and effectiveness, the program came to an end in December 2009, after the MSSS notified it that a youth centre was not authorized to provide prevention services.[257]

For its part, the Commission encourages this type of partnership, to the extent that it has proven to be an effective prevention measure for dealing with the factors associated with endangering children and youth and as part of a collaborative intervention in which the DYP can rely on the expertise and experience of organizations working, among others, with racialized groups.

4.3.2.2 Immediate protection measures

A multidisciplinary team that is familiar with the intercultural approach can assist the DYP in determining with greater discernment whether immediate protection measures are required in cases

256 For comparison, of the 4,602 reports accepted by the DYP in 2008-2009, 3,301 (or 72%) resulted in the file being closed at the end of the evaluation, on the grounds that the child's development or security were not considered to be in danger. ASSOCIATION DES CENTRES JEUNESSE DU QUÉBEC, *Bilan des directeurs de la protection de la jeunesse 2008-2009*, p. 17.

257 "This project came to end in December 2009 due to government mandates that clearly stated that preventative services could not be delivered by a youth centre, as it is not the mission of a youth centre to prevent referrals to its services. Nevertheless, it is a model that has proven its effectiveness and one that can be emulated by a community group or a CSSS in collaboration with a youth centre." Brief presented to the Commission by Batshaw Youth & Family Centres, p. 1-2.

where the security of the child appears to be endangered. In this area, the ACJQ noted that DYPs are perhaps more quick to apply immediate protection measures to Black youth because they are more often reported for physical abuse, a reason that generally requires a preventive placement as soon as possible. The ACJQ recognized that DYPs should engage in a self-criticism exercise in order to ensure that, in the case of Blacks, the risk management analysis is not overzealous. Here again, a collaborative intervention by the DYP, community organizations and first-line services at this stage would greatly help in terms of reducing cases where the risk assessment was wrong because it was based on an erroneous assessment.

4.3.2.3 Evaluation

A number of participants drew attention to an innovative role that the interventions by the DYP could perform when conducted in partnership with the community and first-line services. They saw this as an opportunity for the partners involved to not only inform the decisions taken by the DYP with respect to youth who have been reported and their families, but also to intervene during the evaluation in order to avoid children being taken into care by the DYP. In the following paragraphs, the Commission will draw attention to an experiment that, although is not unique, deserves to be mentioned, because it provides a good illustration of the relevance of partnerships in assisting the DYP to improve its intervention at the evaluation stage in a context of cultural diversity.

The *Éduquons nos enfants sans corrections physiques* [Let's Educate our Children without Corporal Punishment] Program

This is a partnership involving CJM-IU and two community organizations. Within the framework of this partnership, the DYP may, during the evaluation stage, recommend to parents of children who are reported for "physical abuse" that they take a course on parenting skills called "*Éduquons nos enfants sans corrections physiques*". This program, which seeks to develop parenting skills using alternatives to corporal punishment, has been available since the end of the 1990s from the Maison d'Haïti, which works with families of Haitian origin in Montréal, and since 2001 from the Centre Mariebourg, whose mission is to stop the spread of violence by promoting non-violent behaviour. These two organizations offer training to parents who are referred to them by a school, a CLSC or a DYP social worker.[258]

Parents are only referred by the DYP during the evaluation stage if they satisfy eligibility criteria[259] and if an intervener from the evaluation/orientation team handling their file considers this approach to be appropriate. At the end of the course, which is voluntary and which comprises four meetings, an attendance and progress report is provided to the DYP social worker by the organization's trainer. If the "report is satisfactory, of in other words, if the parent has actively participated in the four meetings and shown a desire to find alternatives to the use of corporal punishment, the file can be considered to be closed." On the other hand, if the parent does not satisfy the criteria for success in the program, the evaluation process continues.

This program was evaluated by researchers in 2003-2004 in order to determine its effectiveness. Subject to some recommendations aimed at improving the program, these researchers found that it

258 Isa Iasenza, "Comment éduquer nos enfants sans utiliser la correction physique," *Revue professionnelle Défi jeunesse*, 1999, [on line]. www.centrejeunessedeMontréal.qc.ca/pdf/cmulti/defi/defi_jeunesse_9910/correction.htm (Consulted on December 9, 2010)

259 *Ibid.* The eligibility criteria are as follows: 1) parents must be the subject of an evaluation by the DYP for physical abuse for the first time, and 2) the child whose situation has been reported must be between 5 and 12 years old.

was relevant and effective.[260] In fact, of the 72 parents of Haitian origin who participated in the course given by the Maison d'Haïti in 1998-1999, 18 had been referred by the DYP during the evaluation stage. Of this group, 14 received a certificate attesting that they had successfully completed the training, and accordingly, had their files closed by the DYP.[261]

At the time of this writing, CJM-IU mentioned to the Commission that it was about to make its partnership with the Centre Mariebourg official in a formal arrangement for the first time. However, it would appear that agreements of this type are precarious, because we were told by CJM-IU that the community organization involved has not been offered additional funding for the services that it is agreeing to offer.

4.3.2.4 Voluntary measures

The valuable contribution of community organizations and first-line services during the orientation stage was also mentioned in terms of promoting the application of voluntary measures and thus avoiding bringing the case to court. In this respect, it is worth mentioning that, in the study cited above[262] on all reports accepted in 2007-2008 by CJM-IU and Batshaw, it appeared that the DYP went to court more often in cases involving black families (60%) than white families (54%), although the difference was not significant. In this context, organizations that specialize in intercultural and antiracism intervention or those that serve Black communities can assume an active role in facilitating better intercultural understanding between the DYP social workers and the families concerned. Quite often, these people can assist the authorized DYP personnel in terms of identifying and applying measures that promote the active participation of children and their parents, and are also compatible with the family's cultural and educational norms, to the extent possible.

> "Too often the youth centre social workers don't try hard enough to collaborate with the parents, to understand them and to support them in helping them get their act together.
>
> Eugénia Romain, Conseil ethnique des droits humains

Overall, it appears that the partnership experiences involving the DYP, the community and first-line services generally achieve their objectives. In fact, these partnerships make it possible to apply an intervention model based on the complementarity of expertise and driven by a preventive, proactive approach that is sensitive to the reality and the needs of the communities served at every stage of the protection system.

THE COMMISSION RECOMMENDS:

- **that the MSSS ensure that formal partnerships with youth centres, first-line services and community organizations become the standard for youth protection, and secure its funding;**
- **that youth centres and CSSS establish more formal partnerships with community organizations, when the situation allows, so that interventions with migrant or racialized families are supported by a multidisciplinary and intersectorial team with a view to ensuring that the services are adapted to the needs of this clientele.**

260 Marie-Ève Clément, Karine Côté and Isa Iasenza, "*Que retenir de l'implantation et de l'efficacité du programme "Éduquons nos enfants sans corrections physiques"?*", Défi Jeunesse, November 2004, vol. XI, No. 1, p. 8-13.

261 I. Iasenza, op.cit., note 258.

262 C. Lavergne, S. Dufour, J. Sarniento and M.-È. Descôteaux, op.cit., note 246, p. 238-239.

4.4 REVISION OF CLINICAL ASSESSMENT TOOLS

During the consultation, some participants mentioned that youth centres should revise their assessment tools in order to ensure that they take into consideration issues associated with cultural diversity during the evaluation and orientation stage. It was suggested that the clinical indicators used by the DYP at this stage should be subjected to a rigorous examination in order to ensure that they allow for readings of the situation that are sensitive to the ethnocultural diversity of the clientele. The challenge here is to ensure that the indicators developed for majority group families remain valid when applied to families belonging to ethnocultural minorities. Both CJM-IU and Batshaw are aware of the importance of these issues. To this end, Batshaw has adopted "policies and structures that promote the development of clinical and administrative processes that ensure that our interventions/decisions show sensitivity to cultural diversity."[263]

As for CJM-IU, it created a task force with the following terms of reference in March 2008:

> "Make all adjustments required to the integrated clinical process so that the ethnocultural dimension is systematically considered, whenever relevant to do so, in order to ensure the best possible services to this clientele;
>
> Identify the indicators that will alert social workers to the necessity of seeking an opinion from a professional with expertise in immigrant clienteles;
>
> Revise the tools used at all key collaborative moments of the integrated clinical process so that they take into account specific dimensions to be considered when the intervention concerns a child from a cultural community."[264]

At the conclusion of this work, CJM-IU prepared a reference document entitled *Enjeux à considérer dans l'application du processus clinique intégré auprès de la clientèle issue de l'immigration* [Issues to consider in the application of the integrated clinical process to an immigrant clientele].[265] However, it would seem that these major orientations had not yet been implemented in practice in the spring 2010, even though they are now taken into consideration within the framework of clinical development.[266]

The Commission is pleased to see that CJM-IU and Batshaw have developed reference documents stating the guidelines for ensuring that the ethnocultural dimension is taken into account in the clinical evaluation process.

THE COMMISSION RECOMMENDS:

that all DYPs adopt a reference document stating the guidelines for integrating the intercultural and antiracism approach to their clinical evaluation processes, and that they ensure that the orientations and principles of this document are well understood and applied by the social workers.

263 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, op.cit., note 246, p. 52.

264 J.-M. DAIGNEAULT, op.cit., note 255.

265 *Ibid.*

266 *Ibid.*

4.5 Training and human resources

4.5.1 Including the intercultural and antiracist approach in organizational policies

Throughout the consultation, many participants asserted that one of the essential conditions for eliminating racial profiling is to include the main principles of the antiracism and intercultural approach in an institution's organizational policies. Such an approach makes it possible for senior management to make all personnel aware of the guidelines and philosophy that should underlie the actions of each employee and professional involving clienteles from ethnocultural and racialized minorities. It would also allow the institution to describe exemplary intervention procedures for each guideline.

The Commission asked the youth centres from the Montréal region (CJM-IU and Batshaw) whether the principles of the antiracism and intercultural approach were formally included in their respective organizational policies.

In 1993, Batshaw included the main principles of the intercultural and antiracism approach in the statement that sets out its institutional undertakings[267], and then in its code of ethics in 1994[268]. It also adopted two policies in 1995, one entitled "Commitment to Racial and Cultural Equality" and the other entitled "Basic Principles and Guidelines for Services to Visible Minorities in Foster Care." As their names indicate, the first is intended as the foundation of the principles of an antiracism intervention, while the second sets out the guidelines for guaranteeing that ethnocultural diversity is taken into account in the services provided for children who are placed in care.

As for CJM-IU, at the time of the public hearings, it had no policy specifying that it was committed to including an antiracism and intercultural approach in the framework of its interventions, but it had adopted a Policy on Ethnocultural Diversity in December 2010.

However, unlike Batshaw, CJM-IU has yet to include in its mission statement and its code of ethics a commitment to respect the principles of an intercultural and antiracism approach with its clientele.

THE COMMISSION RECOMMENDS:

that youth centres include their commitment to respecting the principles of an antiracism and intercultural approach in a policy, their mission statement and their code of ethics.

4.5.2 Internal resources supporting the consideration of ethnocultural diversity

Youth centres that serve a diversified clientele generally recognize that it is essential for them to be able to rely on intercultural expertise to guide their interventions. But what strategies have they developed in order to be sure of having access to such expertise in practice? As we have seen, the consultations made it clear that partnerships created with community groups are a winning strategy in this respect. However, such strategies, while essential, are not sufficient.

267 In their mission statement, the Batshaw Centres state that they are commited to "respect the values, beliefs and sexual orientations of those we serve in this community which has many races, languages, cultures and religions." [on line]. http://www.batshaw.qc.ca/sites/default/files/mission-statement -2006.pdf (Consulted on December 13, 2010)

268 The Batshaw Code of Ethics (revised in 2008) includes the following passage: "We treat individuals with respect and dignity [...] by: - actively and continually seeking to inform ourselves of the values and lifestyles of different cultures, religions, histories, sexual orientations of users and to know them; - participating in activities or by developing programs that encourage understanding of diversity as well as by developing the competencies necessary to intervene in this context; - understanding the religious or cultural practices of a family and taking them into consideration," cited in S. Dufour, C. Lavergne, G. Hassan, F. Demosthène and G. Savoie, op.cit., note 250, on page 47.

Youth centres must also provide in their organizational structures procedures that will ensure that the intercultural and antiracism approach is taken into consideration in the work of their social workers. In this section, we will examine the procedures that have already been implemented by CJM-IU and Batshaw to this effect, and suggest certain recommendations for improving the institutional offering with respect to intercultural expertise internally.

Without assuming that these are unique cases, we should mention that Batshaw and CJM-IU told the Commission that they have advisory committees on issues regarding clienteles from ethnic and racialized minorities. For example, CJM-IU has had an "advisory Committee on the accessibility of services for ethnocultural communities" since 1996, the purpose of which is to advise the Executive Director of any issue involving the management of ethnocultural diversity. In addition to representatives from all departments, this committee includes a youth of Haitian background and representatives of three community partners: the Alliance of the Cultural Communities for Equality in Health and Social Services (ACCESS), the Centre haïtien d'action familiale (CHAF) and TCRI. This committee meets approximately six or seven times per year, adopts an annual plan, and reports on its achievements annually. The Commission can only agree with CJM-IU when it points out that the existence of such a committee "contributes to improving the quality of services offered in a context of cultural diversity, and allows close links to be maintained with the community."[269] Finally, we note that CJM-IU recently created the position of Community Partnership and Ethnocultural Management Advisor.

For its part, Batshaw established an advisory committee on "multiracial and multicultural issues" in 1995. This committee reports directly to the Executive Director, and its mandate is to validate the content of the institution's various policies in order to ensure that they respect "our commitment to racial and cultural equality."[270] In addition to this committee, Batshaw has two special advisory committees, for the Jewish community and the Black community, both of which report the Board of Directors.

In 2009, CJM-IU established an internal "intercultural consultation clinic" that includes members of the personnel identified as experts in this field and responsible for supporting intervention in an intercultural context upon request. CJM-IU also uses interpreters provided by the health and social services agencies as required. The equivalent of such an initiative at Batshaw is the existence of a "bank of consultants and language and cultural interpreters comprising employees from diverse ethnic and cultural communities."

The Commission notes with satisfaction that CJM-IU and Batshaw have advisory bodies or human resources responsible for assisting the protection services in integrating the intercultural approach, both in the planning of their main orientations and policies and in the daily work of the social workers. However, in order for such initiatives to reach their full potential, DYPs must ensure that all of the personnel at the youth centres adopt and use the available resources to support their interventions in an intercultural context.

THE COMMISSION RECOMMENDS:

that youth centres establish procedures intended to ensure that the intercultural and antiracism approach is taken into account at all levels of the organization.

269 S. Dufour, C. Lavergne, G. Hassan, F. Demosthène and G. Savoie, op.cit., note 250, p. 63.

270 Letter from the Batshaw Centres, at the request of the Commission, reporting their achievements contributing specifically to counter "any possibility of racial profiling."

4.5.3 PERSONNEL TRAINING

Throughout the consultation, many participants asserted that a work force that is well trained in the intercultural and antiracism approach constitutes one of the essential keys to a strategy for preventing and curbing "ethnoracial" discrimination. In the youth protection system, such training seeks to equip the social workers to avoid drawing conclusions based on prejudices or misunderstandings of cultures foreign to their own in their evaluation of the situation.

> "Researcher Léonel Bernard states that DYP social workers express concern when they see a pantry filled with corn, rice, beans and vegetable oil. A family that doesn't follow the Canadian Food Guide? They note that the child is not well fed."
>
> Excerpt from a news story "Un racisme méconnaissable" [Unrecognizable Racism] by Judith Lachapelle, in *La Presse*, September 30, 2008.

Since 1994, Batshaw has been offering a compulsory course on cultural diversity and intervention in a multicultural setting to all of its personnel. CJM-IU only recently started to offer intercultural training to its employees, beginning in September 2010. The course, which is voluntary, is given in collaboration with the CSSS de la Montagne research centre. According to CJM-IU representatives, it has been very successful among its employees.

Although the Commission does not doubt the interest shown by CJM-IU employees in this course, it would like to point out that those who are most in need of taking such a course are often those who fail to recognize its value. That is why Batshaw's idea of making such a course compulsory seems to us to be relevant in order to reach all employees.

THE COMMISSION RECOMMENDS:

that youth centres that serve a clientele from ethnic and racialized minorities make an intercultural and antiracism course compulsory for all of their employees.

4.5.4 RECRUITING A DIVERSIFIED WORKFORCE THAT IS SENSITIVE TO DIVERSITY

The advantages that an employer can derive from an ethnically diversified work force no longer need to be demonstrated. Therefore, in the following paragraphs, we will examine the preferred methods and the results obtained by Batshaw and CJM-IU, together with the two objectives mentioned above, namely hiring a workforce that is both culturally diverse and sensitive to cultural diversity.

Batshaw applies a hiring policy that not only reflects the ethnocultural diversity of its clientele, but it does so in greater proportions than the representation objectives imposed on it by the Act respecting Equality of Access to Employment in Public Bodies.[271] According to the analyses of representation that Batshaw provided to the Commission in January 2010, its permanent employees include 21.9% visible minorities and 19.9% ethnic minorities.[272] Although the Commission has not yet performed

271 Op.cit., note 17.

272 The criteria that determine membership in an ethnic minority within the meaning of the Equal Access Act are the following: "[...] persons who are members of visible minorities because of their race or the colour of their skin and persons whose mother tongue is neither French nor English and who belong to a group other than the aboriginal peoples group or the visible minorities group" (sec. 1).

under-representation analyses[273] for the youth centres, these percentages seem to be remarkable at first glance, given that the Montréal population consisted of 15.1% visible minorities and 17.8% allophones[274] in 2006, according to Statistics Canada. Finally, it is important to point out that, according to another data source,[275] Blacks account for up to 19% of the temporary and permanent employees working at Batshaw. For comparison purposes, according to Statistics Canada, Blacks represent 4.9% of the Montréal population 15 years old and older.[276] In the Commission's view, this representivity of Blacks among the Batshaw staff constitutes an important asset, given the disproportionate weight of youth from Black communities in the youth protection system.

In addition, Batshaw has noted a constant growth in the number of persons belonging to visible minorities among its managers, although a sort of glass ceiling remains to be broken among senior management. Finally, five of the 16 members of the Batshaw Board of Directors are members of racialized minorities.[277] Such a result deserves attention, even more so because the public health and social services establishments, including youth centres, have a legal obligation to ensure that appointments of members of their Board of Directors, reflect the ethnocultural and linguistic composition of the clientele they serve.[278]

As for CJM-IU, the only data that the Commission has with respect to its staff come from the representation analyses that this organization provided in January 2010. According to these data, CJM-IU staff comprise 10.1% visible minorities and 1.8% ethnic minorities.

Therefore, in a number of respects, Batshaw has a more diversified personnel than CJM-IU in "ethnoracial" terms. Some of the measures that Batshaw has adopted in order to ensure that racialized and ethnic minorities are adequately represented among its personnel and that the individuals who are hired have good intercultural competencies, deserve mention.

First, for certain job openings, Batshaw includes special requirements that candidates must satisfy, such as "proven knowledge of the culture, community resources and religion of the clientele served."[279]

Secondly, the Batshaw "Advisory Committee on multiracial and multicultural issues" participates in the development of interview protocols in order to ensure that they properly assess the intercultural competences of candidates.

Finally, we note that at least one member of the "Advisory Committee on multiracial and multicultural issues" is a member of the selection committees responsible for filling management positions, in order to ensure that the candidates who are selected to occupy management or senior executive positions are sensitive to ethnocultural diversity and discrimination related issues. This specific practice attracted our attention, to the extent that it contributes, through systemic measures, to ensuring

273 Under-representation is calculated as follows pursuant to the Equal Access Act: "In order to determine whether a target group is under-represented in a type of occupation, the Commission shall compare the representation of the group within the public body's workforce with the representation of the group among persons qualified for that type of occupation or capable of becoming qualified for that type of occupation within a reasonable time in the relevant recruitment area." (Sec. 7).

274 It should be noted that the concept of allophone, which designates persons whose mother tongue is neither French nor English, covers, fairly well, if imperfectly. the ethnic minorities within the meaning of the Equal Access Act.

275 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE and G. SAVOIE, op.cit., note 250, page 45. Note that the Commission has verified the validity of this information with Batshaw.

276 STATISTICS CANADA, *2006 Population Census*, Product No. 97-562-XCB2006010 in the catalogue.

277 S. DUFOUR, C. LAVERGNE, G. HASSAN, F. DEMOSTHÈNE et G. SAVOIE, op.cit., note 250, page 51.

278 *Act respecting health and social services*, R.S.Q., c. S-4.2, sec. 138, par. 2.

279 Op.cit., note 270.

that the managers and senior executives play a leadership role in the fight against racial profiling and discrimination of an "ethnoracial" nature within their institution.

In conclusion, the Commission considers the institutional practices instituted by Batshaw for recruiting to be exemplary. Measures of this type are in line with the philosophy underlying the work of the Commission when it examines the recruiting practices of public bodies that are subject to the Equal Access Law in order to change, by appropriate corrective measures, any rule, standard or practice that is likely to fuel systemic discrimination against target groups.

THE COMMISSION RECOMMENDS:

- **that youth centres develop and apply an interview protocol and hiring examinations that ensure that the instruments and selection criteria used for the purposes of recruiting in fact measure the intercultural and antiracism competencies of candidates for all job categories, including executive positions.**

5. THE COMMISSION'S COMMITMENTS

The Commission was one of the pioneers in Québec in thinking about, conceptualizing and then engaging in the awareness-raising work involved in having the existence of racial profiling recognized as a form of discrimination. It has made a significant contribution in its submissions and publications to better define the concept of racial profiling[280] and to clarify the key indicators that allow this form of discrimination to be detected, and then to be proved in the courts.[281] This preparatory work provided the necessary tools for the Commission's investigation department to receive complaints of racial profiling starting in 2003. In addition, the Commission has organized training sessions on ethnoracial discrimination in general and on racial profiling specifically. It has also been asked to support various organizations, educational institutions and assistance groups in their search for solutions to concrete problems of discrimination or racial profiling or internal intercultural tension.

However, the Commission is entirely aware that its work in fighting discrimination and racial profiling can be improved. In fact, during the consultation, it quickly realized that the loss of trust in public institutions, as expressed by victims of racial profiling and by groups and organizations that have devoted themselves to its elimination, had not spared the Commission, but rather the opposite. Most of the people and groups who were consulted acknowledged and supported the efforts of the Commission in fighting racial profiling, but more than a few either stated that its actions along these lines were inadequate or that it seemed to adopt a wait and see attitude or that it was unwilling to fight, especially on the judicial front. It should be said that a number of participants were thinking of previous consultations or public hearings held in Québec on racism and discrimination. They were quick to remind us that these exercises generally had not contributed to making significant and lasting changes, and therefore, they doubted that this consultation would succeed where the others had failed.

Noting these criticisms, the Commission would like to explain in this section how it intends to act in order to deal with expectations expressed with respect to its work during the consultation.

5.1 DETECTING RACIAL PROFILING AND FINDING EVIDENCE

Among the criticisms directed to the Commission was that it accepted too few complaints of racial profiling, and set the bar too high in its search for evidence. It cannot be repeated too often that racial profiling is a form of discrimination that is difficult to define, because it is extremely subtle and insidious. Searching for contextual elements in which racial profiling is practiced requires special expertise. That being said, it was vital for the Commission that the personnel assigned to handling complaints know and understand the relevant elements required to prove racial profiling. To this end, the research department of the Commission produced a document entitled "Racial profiling: guidelines for investigations" for the use of its complaint handling personnel staff, and training was offered in this area.

Nevertheless, the Commission is aware that there remains much to be done in order to ensure that this training actually achieves its objectives. The group that has been most critical in this respect is CRARR,

280 COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, op.cit., note 7.

281 *Ibid*, op.cit., note 7.

which assists a number of the complainants in racial profiling cases. In its brief, CRARR concluded that the Commission staff assigned to complaint handling was poorly equipped to verify allegations of racial profiling in its search for relevant evidence. The Commission is aware of this criticism, and intends to take the necessary measures to ensure that training on racial profiling given to its staff is accompanied by follow-up procedures intended to measure its effectiveness and make any appropriate corrections, just as it has recommended to other institutions.

5.2 THE SYSTEMIC APPROACH

As mentioned repeatedly in this report, racial profiling is often systemic in nature. For example, that is the case when the individual behaviours that are criticized in one or more police officers can only be understood in light of the broader social and organizational context in which they occur. In such cases, the complexity of the case requires analysis, an investigative method and a judicial strategy that are likewise systemic. Some participants, like CRARR and the Barreau du Québec, feel that the Commission has not yet sufficiently considered the systemic nature of racial profiling in its handling of complaints, either when searching for evidence during an investigation or when seeking remedial measures from a respondent.

The Commission finds such criticism to be not totally unfounded. It is already taking steps to ensure that the staff assigned to complaint handling has access to adequate expertise with respect to systemic intervention, when necessary and at every step of the process. However, it is most often requests for specific expertise on precise points, such as those addressed to the legal or research and education departments, that cause difficulty. In other words, a true method of systemic intervention still needs to be developed and adopted. That is why the Commission, in order to better fulfill its responsibility of defending rights, is now in the process of developing an intervention model that, in the case of complaints containing a systemic dimension, would form a multidisciplinary team combining complementary expertise whose members would collaborate during all steps of complaint handling.

Such an intervention method would enable the Commission to be more attentive to "contextual" evidence, such as statistical data that reveal suspicious recurring "patterns" in police actions, or organizational policies that have discriminatory effects on how police interact with racialized minorities. The Commission would then be in a better position to propose or demand, as the case may be, remedies that would bring the respondent to implement corrective measures of a structural nature. It should not be forgotten that systemic remedies have a much larger scope than a simple remedy in an individual case.

5.3 MEDIATION

The Commission is aware that, in files involving a systemic dimension for which there are no precedents in case law, a settlement achieved by mediation can be a disappointment for certain groups that are focused on the public interest and advancement of the law. However, it is important to remember that, pursuant to section 71(2) of the Charter, the Commission must "foster a settlement between a person whose rights allegedly have been violated, or the person or organization representing him, and the person to whom the violation is attributed." In such cases, it is not up to the Commission to object to the wish of the complainant, unless it is contrary to the public interest to do so. However, the Commission agrees to continue, in the public interest, to make certain settlements obtained through mediation accessible, while protecting the anonymity of the parties.

The Commission also wishes to draw attention to the fact that, in cases of racial profiling, moral and psychological exhaustion, and even discouragement, loom very large among the reasons why some complainants decide to withdraw their complaint at the end of mediation. Such scenarios are even more likely to occur when, as is the case for many complaints of racial profiling currently handled by the Commission, the investigation process or the resulting legal proceedings are seemingly endless. The issue of the time involved in handling racial profiling complaints is discussed in the next section.

5.4 Delays in handling complaints

If there is one criticism that was often heard during the consultation, it was of the length of time taken by the Commission's investigations and judicial proceedings in racial profiling cases. It was repeatedly mentioned that such excessive delays are largely responsible for the loss of confidence in the Commission with respect to fighting racial profiling, as expressed by ethnic and racialized minorities.

Not only is the Commission concerned by this problem, but it also intends to do everything it can to attack it head on. Before reviewing the factors that cause these excessive time periods in handling racial profiling complaints and the steps required to fix the problem, let us first look at some statistics. Since 2003, the Commission has received 194 complaints involving racial profiling. Although the great majority of them involve police departments, some are also directed against public transit companies, private security agencies and the managers of public spaces. As of today, there are 89 still active files of racial profiling files. Of these, 11 are at the preliminary evaluation stage, four are in mediation, 67 are being investigated while in seven other files, the Commission has made recommendations in order to obtain redress. However, the Québec Human Rights Tribunal has yet to rule on the merits of a racial profiling case and the Commission has not been able to win compensation for the harm done.

Why has Commission not succeeded in obtaining a single judgment on the merits in matters of racial profiling since 2003? Some believe that this result is partly due to the slowness of the work of the personnel assigned to complaint process, especially during the investigation stage. Although the Commission has made a number of efforts to reduce its complaint processing time in recent years, it is aware that it can do better. In addition, considering that the Commission has made the fight against racial profiling an organizational priority in its most recent strategic plan, it is committed to doing everything is in its power to minimize the time required for handling complaints of racial profiling, in particular during the investigation stage.

Finally, all participants are aware that the excessive delays in the handling process of racial profiling complaints are largely due to the legal strategy of the City of Montréal, which has consisted of multiplying its delaying tactics in order to keep the Human Rights Tribunal from hearing complaints on their merits. These tactics, which have been going on for at least five years, are of two types. First, the City of Montréal challenged in court the Commission's right to pursue racial profiling cases if the complainant had already been found guilty of the offence that he was charged with. Yet, recently the Québec Court of Appeal[282] upheld the decisions of the Human Rights Tribunal and the Superior Court[283] which both ruled that a conviction for a violation of a municipal by-law did not, in an of itself, render impossible a consideration of the merits of the allegations of profiling with respect to the reasons underlying the police intervention.

282 *Montréal (Ville de) c. Commission des droits de la personne et des droits de la jeunesse*, QCCA 519, no. 500-09-019768-092, March 17, 2011.

283 City of *Montréal v. Human Rights Tribunal*, S.C. Montréal, no. 500-17-045563-080, May 21, 2009. *Montréal (City of) (Service de police de la Ville de Montréal (SPVM) v. Commission des droits de la personne et des droits de la jeunesse*, QCTDP 23, no. 500-53-000284-081, August 28, 2008.

The other legal front opened by the City of Montréal involves the refusal of police officers to collaborate and testify in the Commission's investigations. It should be stated from the outset that, in general, complaints of racial profiling against police that are filed with the Commission are concurrently with complaints to the Police Ethics Commissioner. However, as mentioned in the section on public security, police officers refuse, in such cases, to cooperate with the Commission investigators at the fact-finding stage, invoking their right to avoid self-incrimination pursuant sections 189 and 192 of the Police Act.[284] According to these provisions, in a police ethics investigation, an officer can refuse to provide any information or document that the Commissioner requests. The police officers who exercise this right when concurrently the subject of an investigation by the Commission for the same facts state that, for reasons of caution, they prefer not to give their statement to the Commission investigators for fear that their remarks will reach the attention of the Police Ethics Commissioner. In addition, in some cases, even when they are not the subject of an ethics complaint, the police officers involved in a Commission investigation refuse to collaborate with its investigators in case the complainant decides to file an ethics complaint within the one-year period prescribed by law.[285]

In response to the numerous *subpoenas* sent by the Commission to the City of Montréal to direct its police officers to collaborate with its investigations, the City sought to challenge their legality in Superior Court. Such tactics, which persist to this day, contribute to delaying and considerably extending the investigation process in racial profiling cases.

In short, in racial profiling cases, the Commission is facing a particularly aggressive legal strategy. More specifically, the City of Montréal and its police department have chosen to multiply the proceedings in order to prevent the Commission from doing its work, and thus avoid having the Human Rights Tribunal examine allegations of racial profiling on their merits at all costs. In 2009, Marc-André Dowd, then Vice President of the Commission, explained why such a strategy is harmful:

> "It has as its consequence that two public institutions, the Commission des droits de la personne et des droits de la jeunesse and the SPVM, must devote very large public resources to legal matters. It also results in serious delays, for all the parties involved, alleged victims as much as police officers, before justice is done. In recent months, between motions to dismiss, appeals of interlocutory decisions and applications for judicial review, we have resumed the debate with the SPVM on collateral issues before the Human Rights Tribunal, the Superior Court and the Québec Court of Appeal, without ever having had an opportunity to thoroughly discuss any case and answer the fundamental questions: are the elements presented as evidence before the Court proof of racial profiling, contrary to the Charter of Human Rights and Freedoms? If the SPVM has the right to choose its legal strategy, we also have the right to criticize its consequences, in particular as they relate to disputes that involve two public bodies, both administering public funds."[286]

In other words, the procedural "war of attrition" that is being waged at this time by the City of Montréal and its Legal Department is a deplorable strategy, even if it were only because it deprives complainants of their elementary right to justice, but also because it is very costly, both in human and social terms. Faced with these tactics, the Commission has so far been largely helpless. Like the majority

284 *Police Act*, op.cit., note 136, sec. 192: "Sections 189 [...] do not apply in respect of a police officer whose conduct is the subject-matter of a complaint. No statement made by a police officer in whose respect no complaint has been made and who cooperates with the Commissioner or the investigators during an investigation carried out following a complaint made against another police officer may be used or held against that police officer, except in a case of perjury."

285 *Ibid.*, sec. 150.

286 Marc-André Dowd, "Le profilage racial et la Commission des droits de la personne et des droits de la jeunesse", *Développements récents en racial profiling (2009), Service de la formation continue du Barreau du Québec*, 2009 (closing remarks at the symposium on racial profiling).

of participants who testified during the consultation, it holds that the City of Montréal must cease to try to prevent the Tribunal from deciding the allegations of racial profiling brought before it on their merits. If the City of Montréal is serious in its public commitment to prevent and fight racial profiling, it must insist that the SPVM instruct the police officers involved to give testimony to the Commission's investigators so that it can determine the facts in an objective way during the investigation phase.

That being said, some participants made it clear to the Commission that it they wanted it to revise its own legal strategy in matters of racial profiling. In this respect, Alexandre Popovic, President of the Coalition contre la répression et les abus policiers (CRAP), urged the Commission to show more of a fighting spirit and to be more proactive in responding to the offensive legal strategy of the City of Montréal. The Commission is sensitive to this criticism, and intends to take it into account in the future. Therefore, if the Legal Department of the City of Montréal continues to multiply proceedings in order to avoid collaboration by the police officers involved with its investigators, the Commission is committed to revising its legal strategy. It will present its case to the Tribunal, even in the absence of collaboration or testimony from the impleaded party (the SPVM). It is true that section 71(1) of the Charter provides that an investigation by the Commission should be a non-adversary investigation, which assumes that both parties can give their version of the facts. However, in cases where the respondent party does not make use of this right, nothing prevents the Commission from filing an action in the Tribunal, on behalf of the complainant. Such a procedure would not only be a legitimate way of ending the legal impasse into which the Legal Department of the City has put the Commission, but would also significantly contribute to reducing its investigation times.

In addition, while the Commission is not entirely responsible for the excessive delays in matters of racial profiling, it is nevertheless receptive to criticism expressed by the CRARR with respect to requests for information from complainants about progress in their case:

> "The often excessive and unexplained delays, despite repeated requests for information about developments in a particular case (an increasingly frequent trend). It may be normal that some delays result from the lack of financial and human resources, forcing the investigators to extend the duration of an investigation from time to time or to set a file entirely aside for several months, in order to devote their attention to other, older files (...). But it is abnormal and unacceptable, as in our recent experience, for the delays not to be explained to the complainants, despite requests for information submitted in writing to the investigators and their supervisors [...]".[287]

Taking note of this criticism from the perspective of improving the quality of the services offered to citizens, the Commission undertakes to respond to requests for information from complainants in a more timely and diligent manner, even if it is only to explain to them, where appropriate, the reasons why the handling of their case has been delayed or suspended.

5.5 Regaining the confidence of community organizations

In terms of fighting racial profiling and discrimination, the Commission is committed to regaining the trust of not only ethnic and racialized minorities, but also of the groups and organizations that represent them and defend their interests. Restoring this trust is essential, because the Commission seeks to be a credible leader and partner in the eyes of those involved in this battle on the ground.

287 Brief submitted by the CRARR during thepublic hearings.

In order to do so, the Commission is committed to maintaining the spirit that characterized its consultation on racial profiling, while remaining attentive to the numerous community organizations that were met on this occasion, as well as continuing to work in collaboration with them. It undertakes to guarantee rigorous follow-up in the coming years in order to ensure that its recommendations to various institutional actors in this report are in fact implemented.

THE COMMISSION UNDERTAKES TO:

- ensure that the courses on racial profiling, in particular those given to its own personnel assigned to complaint handling, are accompanied by follow-up procedures intended to measure their effectiveness, and where necessary, to make the appropriate corrections;
- design and implement an intervention model that, in the case of complaints with a systemic dimension, provide for the formation of a team that brings together complementary expertise and whose members work in collaboration during every stage of the complaint processing;
- pay careful attention, when handling complaints of racial profiling, to elements of contextual evidence, such as statistical data revealing recurring suspicious patterns in police interventions or organizational policies with potentially discriminatory effects;
- be more inclined, when handling complaints of racial profiling, to propose or demand, as the case may be, corrective measures of a structural nature;
- make accessible, in the public interest, the settlements obtained by mediation, while protecting the anonymity of the parties;
- guarantee better follow-up with complainants in order to keep them better informed of the progress of the handling of their complaint;
- reduce the time involved in handling complaints of racial profiling at every stage to the extent possible;
- prioritize the option of referring cases of racial profiling to the Human Rights Tribunal on their merits in its decision-making process, even in the absence of collaboration from the police officers involved during the investigation stage;
- pursue its efforts to have municipalities, including the City of Montréal and the SPVM instruct their police officers to collaborate in the Commission's investigations of racial profiling, in particular by providing testimony when requested;
- remain attentive to that community organizations that it encountered during the consultation, and to continue to work in collaboration with them;
- carry out rigorous follow-up in the future in order to ensure that the recommendations that it has addressed to various institutions in this report are in fact implemented.

CONCLUSION

If there is one conclusion that the Commission can legitimately draw from this consultation, it is that the problems of racial profiling and systemic discrimination as perceived by youth of racialized minorities within the targeted institutions are sufficiently important for society as a whole to feel concerned by them. Québec cannot allow some of its citizens to lose their trust in its public institutions, or even worse, to feel like foreigners in their own society.

Racial profiling and discrimination are sustained by prejudice and stereotyping. Although it is true that both are likely to be found in all layers of society, representatives of the State, given the discretionary power that they exercise in the application of the laws and by-laws, and more generally in the exercise of their duties, have an obligation to neutralize them. In addition, the Commission has pointed out how policies and organizational models in any sector that appear to be neutral can produce systemic discriminatory effects, which is why public institutions, along with the government departments that oversee them, must review their organizational policies in order to ensure that they do not generate discriminatory effects on racialized minorities.

The Commission concludes that the consultation has been beneficial, if only because it has made it possible to identify promising and concrete solutions that cannot be ignored if the government is serious in its intention to eliminate racial profiling and institutional discrimination. In closing, without reviewing all of its recommendations individually — they are listed in the previous section — the Commission insists on restating the axes of intervention that must be applied across the board in the three targeted institutional sectors:

- **Antiracism and intercultural training must be provided to both managers and personnel who will be called to work (basic education) or already working (continuing education) in the institutional sectors concerned;**
- **The personnel of the institutions concerned must reflect the ethnocultural diversity of the groups of people that they serve, at every level of their hierarchical structure;**
- **The prohibition of racial profiling and discrimination must be formally stated in the law, the regulatory framework or the organizational policy, as appropriate, and there must be remedies aimed at penalizing violations;**
- **Public institutions must establish rigorous procedures for data collection and analysis, or where appropriate, must revise those that already exist, in order to better detect instances of racial profiling or discrimination;**
- **Accountability procedures must be instituted at every level of the organizational structure in order to make each stakeholder accountable for its actions aimed at preventing racial profiling and discrimination;**
- **The public institutions concerned must establish more sustainable partnerships with community organizations that interact with ethnic or racialized minorities in order to benefit from their expertise.**

Finally, the Commission wishes to continue to work in cooperation with government departments, public institutions and community organizations so that the recommendations contained in this report can become a reality. Pursuant to its obligation to monitor respect for the principles stated in the Charter and to protect the interest of children and the respect of the rights conferred upon them by the YPA, the Commission also undertakes to ensure rigorous follow-up with respect to the recommendations that it addresses to the various stakeholders, and to honour the commitments that it has made in terms of improving its own interventions.

RECOMMENDATIONS OF THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

THE COMMISSION RECOMMENDS:

1. that the government adopt a policy aimed at fighting racism and discrimination that provides a plan of action for preventing and eliminating racial profiling and its consequences;

2. that each institution targeted by this consultation ensure that its staff reflects the ethnocultural diversity of the clientele that it serves by applying appropriate measures to meet or even exceed the representation targets established in;

3. that the government take the necessary measures to increase the representation of ethnic and racialized minorities in the public administration, and concurrently, that section 92 of the Charter be amended to the effect that Equal Access Employment Programs in the public service are subject to the Commission's reporting and monitoring procedures;

4. that the ministère de l'Éducation, du Loisir et du Sport (MELS), in collaboration with the university faculties concerned, ensure that the degree programs for each sector concerned contain antiracism and intercultural training, and that the students have acquired intercultural competency upon completion of their studies;

5. that government departments and institutions concerned adopt standard methods and indicators for collecting data pertaining to the ethnic origin and colour of their clienteles, with a view to detecting possible discriminatory biases;

6. that the government provide more measures to combat poverty that specifically target the groups at the greatest risk of living below the poverty level, which include recent immigrants, Aboriginals, racialized groups and single mothers, and that it adopt tools to measure the effectiveness of such measures.

THE PUBLIC SECURITY SECTOR

THE COMMISSION RECOMMENDS:

7. that the cities and their police departments review their policies for deploying police by district in order to prevent discrimination and racial profiling;
8. that the cities and their police departments review their policies for fighting crime and street gangs in order to reflect the discriminatory biases that are inherent in the policies or in their application;
9. that the cities and their police departments take measures to ensure that the results of the application of their policies for fighting crime and street gangs are known to the public;
10. that each city and its police department review the police policies and practices with respect to the application of municipal by-laws in order to detect and eliminate any discriminatory impacts on racialized persons;
11. that the City of Montréal and the SPVM review the police policies and practices with respect to fighting incivility in order to detect and eliminate any discriminatory impacts on racialized persons;
12. that the government officially recognize a definition of racial profiling, and take steps to amend the Charter of Human Rights and Freedoms to include discriminatory profiling as a prohibited act. This amendment could be inserted after section 10.1 of the Charter, which protects against discriminatory harassment;

13. that racial profiling be prohibited in the Police Act and in the Code of Ethics of Police Officers of Québec;
14. that the government take steps to amend the Act respecting Private Security to include in it prohibited actions linked to racial profiling;
15. that the cities and administrators of public transit systems provide policies prohibiting racial profiling linked to verifying the payment of fares and the movement of its clientele;
16. that the municipal police departments and the Sûreté du Québec systematically collect and publish data related to the presumed racial identity of individuals during police actions in order to document the phenomenon and take the appropriate measures; and that these same procedures be established by public transit companies with respect to the actions of their employees;
17. that the ministère de la Justice and the ministère de la Sécurité publique take the necessary steps to document the path of racialized minorities throughout the judicial system (laying of charges, trial, sentencing, parole, etc.);
18. that youth centres produce and publish data pertaining to the representation of racialized youth in rehabilitation centres who were sentenced pursuant to the Youth Criminal Justice Act, and pertaining to the types of measures (judicial or other) that the DYP is inclined to propose for these youth;
19. that the ministère de la Sécurité publique and the cities implement an annual accountability process to document actions taken against racial profiling by police services;

20. that police departments introduce measures that ensure greater impartiality in the supervision of their officers, in particular by involving police managers or commanders in the process;

21. that police departments issue instructions to detect and track signs of racial profiling among their officers;

22. that the cities establish anti-profiling watch committees consisting of members of civil society and city council members; and more specifically, that the City of Montréal make public reports by the Commission de la sécurité publique;

23. that the cities draw upon certain successful partnership initiatives between police and the community (such as in Rivière-des-Prairies and Saint-Michel) in order to develop alternative methods for preventing and controlling crime;

24. that police training programs and the École nationale de police du Québec provide anti-racism training that includes a formal evaluation of what has been learned by future police officers; and that the cities and the ministère de la Sécurité publique establish a similar process for police officers;

25. that the government amend the Private Security Act in order to have it include similar training adapted to the private security context;

26. that the École nationale de police du Québec, the cities and the ministère de la Sécurité publique take steps to promote diversity training and activities within racialized communities, both as part the curriculum of officers in training and once they are employed;

27. that cities and police departments take steps to ensure that their practices in recruiting, promoting and evaluating police take into account intercultural competencies;

28. that the ministère de la Justice and the ministère de la Sécurité publique take steps to ensure that all participants in the legal system and administrative tribunals (judges, lawyers, crown prosecutors, parole officers, prison guards, etc.) be recruited, trained, evaluated and promoted in accordance with their intercultural competencies;

29. that the Director of Criminal and Penal Prosecutions adopt rules of practice that make it possible to detect actions involving racial profiling in the cases submitted to him;

30. that the administrators of police departments work with community partners to fight effectively against crime, with respect for the rights of citizens, and that the government and the municipalities allocate adequate funding for this purpose in their budgets;

31. that the government amend the Police Act and the Code of Ethics of Québec Police Officers to enable the Commissioner to conduct investigations on his own initiative when required by the public interest, in order to ensure effective civilian monitoring of the police;

32. that the ministère de la Sécurité publique take steps to enable citizens to better understand the duties of the police and the remedies provided for by the Code of Ethics of Québec Police Officers;

33. that the government amend the Police Act and the Code of Ethics of Québec Police Officers to oblige police, subject to penalties, to inform citizens of their rights whenever they stop someone, make an arrest or write a ticket;

34. that the government amend the Police Act and the Code of Ethics of Québec Police Officers so that the Police Ethics Commissioner, with the consent of the complainant, can send any complaint alleging potentially discriminatory behaviour to the Commission des droits de la personne et des droits de la jeunesse for review.

35. that the government amend the Police Act in order to make the conciliation process optional when a complaint is filed with the Police Ethics Commissioner and to guarantee an investigation when the Commissioner has reason to believe that the Code of Ethics of Québec Police Officers has been violated;

36. that the government amend the Police Act in order to abrogate section 192, which confers upon police officers the right to silence and non-collaboration, given that the police ethics system is of civil rather than criminal nature;

37. that the ministère de la Sécurité publique establish guidelines for the application of the Code of Ethics of Québec Police Officers in order to better guide the Police Ethics Committee in the attribution of the penalties provided for in Sections 234 and 235 of the Police Act;

38. that the ministère de la Sécurité publique and the Director of Penal and Criminal Prosecution issue a directive that provides for withdrawing charges by the Crown in application of Sections 24(1) and 24(2) of the Canadian Charter when the Code of Ethics of Québec Police Officers has been violated by a police officer;

39. that the government amend the Police Act in order that, when its is proven that a ticket was issued as a result of motives or circumstances violating the Code of Ethics of Québec Police Officers, the entity that collected the fine (municipality or governerment) provide financial compensation equivalent to the sum and fees paid;

40. that the ministère de la Sécurité publique implement appropriate measures so that a majority of civilians who are not former police officers conduct the investigations and the conciliation process involving police ethics;

41. that, in order to guarantee greater independence and impartiality for the ethics system, the process of appointing the Ethics Commissioner, the Deputy Commissioner, and members of the Ethics Committee be made known to the public;

42. that the ministère de la Sécurité publique implement appropriate measures in order to ensure that there is fair representation of ethnic and racialized minorities and women within the police ethics system;

43. that the government amend the Police Act in order to provide a regulatory framework for the process of investigating incidents involving police officers that lead to death or serious injury, and that this framework include all the elements and milestones recommended by the Ombudsman;

44. that the ministère de la Sécurité publique adopt guidelines to ensure greater transparency for the investigation process, in particular with respect to the reports transferred to the Director of Criminal and Penal Prosecution;

45. that the government amend the Police Act in order to establish a Special Investigations Bureau, an independent agency that would be charged with conducting investigations of incidents involving police officers that result in death or life-threatening injuries;

46. that the government take steps to ensure the presence of civilian investigators who are not former police officers on the teams responsible for conducting this type of investigation;

47. that the government promote a male-female balance and a representation of Québec's ethnocultural diversity among those responsible for conducting, monitoring and supervising these investigations;

48. that the ministre de la Sécurité publique submit an annual report to the National Assembly on investigations of incidents involving police officers resulting in a death or serious injuries, and on the decisions made in such cases;

49. that any new independent entity charged with investigating incidents involving police officers that result in death or serious injuries submit an annual report to the National Assembly on the management of the investigations it has conducted.

THE EDUCATION SECTOR

THE COMMISSION RECOMMENDS:

50. that school administrations: 1) explicitly state in their educational mission and organizational standards that discrimination in all its forms is prohibited at school, including with respect to maintaining order, discipline and security and 2) examine their practices and organizational standards in order to ensure that they are free of discriminatory bias;

51. that school administrators collaborate more closely with parents and community organizations in order to find solutions to student behavioural problems;

52. that school boards offer training on discrimination and racial profiling to school administrators, faculty and non-teaching staff;

53. that, when school administrations hire a private security agency, they require that the work of the guards be free of racial profiling, that clear instructions to that effect be given and that close control be exercised over them;

54. that school boards and schools that serve a clientele of ethnic and racialized minorities make it compulsory for all of their personnel to attend antiracism and intercultural training;

55. that schools develop alternative models of parent-school collaboration, specifically recognizing persons or parties asked by parents to act on their behalf, including members of their extended family or representatives of community organizations, as legitimate interlocutors;

56. that the MELS, in collaboration with the Institut de la statistique du Québec, conduct validity tests in order to ensure that the index of disadvantage used to determine which schools are eligible for additional financial aid is properly adapted to the schools that serve a high proportion of racialized or immigrant families;

57. that the MELS demand better reporting from schools that benefit from financial aid programs for disadvantaged schools, in order to ensure that the funds are actually used for projects to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;

58. that the MELS provide schools with guidelines that define the precise criteria that proposed projects must meet in order to be eligible for funding from programs designed to promote educational success and retention among students in difficulty in disadvantaged neighbourhoods;

59. that the MELS break down the data pertaining to SHSMLD students in such a way as to provide a more refined statistical snapshot that will make it possible to see the relative weight of racialized and immigrant students within each sub-category and the proportion of such students who are sent to special classes;

60. that the MELS revise its evaluation tools for special needs students in order to ensure that they are not tainted by cultural biases that result in inadequate classifications, and to ensure that the specialized personnel who are authorized to make these classifications take the cultural dimension into account in their evaluations;

61. that the MELS provide a better definition of the concept of "at-risk" students by more clearly stating the criteria that justify the use of this label by school personnel;

62. that the MELS produce data pertaining to the proportion of "at-risk" students represented among racialized and immigrant students, and in particular among those who are sent to special classes or remedial schools;

63. that the MELS break down the data pertaining to "at-risk" students from ethnic and racialized students according to whether they are students with learning disabilities or behavioural problems;

64. that school boards integrate students from the welcome sector into their neighbourhood school from the outset, rather than sending them to a service point for their school board;

65. that school boards provide a transition plan that allows each student in the welcome sector to be integrated into regular classes as quickly as possible, in a way that is adapted to their needs and pace of learning;

66. that the MELS allow for a reduction in the number of students per class when students from the welcome sector are being integrated into regular classes;

67. that school boards, in collaboration with the MELS, ensure that students from the welcome sector who are integrated into regular classes continue to receive language support adapted to their needs;

68. that the Education Act provide an exemption that allows allophone students who enter the Québec school system late and have a major academic delay to continue their secondary school education until the age of 21;

69. that the MELS standardize the tools for evaluating the language competencies of allophone students;

70. that the MELS require school boards to submit to a more detailed accounting of the use and management of funding intended for students receiving welcome and French-learning support services;

71. that the MELS require school boards to document, with data, the educational path of students from the welcome sector in order to verify the efficacy of the welcome and linguistic support services models;

72. that school boards introduce initiatives for newly arrived families in order to create optimum conditions for school and social integration;

73. that school boards ensure that the teaching tools and educational materials used in welcome classes are adapted to the specific needs, socio-cultural realties and ages of the students in this sector;

74. that school administrations ensure that there is collaboration between the welcome classes and the regular classes in order to allow for optimum integration of students who move from one sector to the other;

75. that school boards ensure that the Adult Education Centres take better account of the classifications made in the youth sector and of the information on educational needs and school difficulties recorded by secondary schools, and particularly of intervention plans;

76. that the MELS ensure that students with special needs who attend Adult Education Centres can benefit from an instructional services that is adapted to their needs;

77. that school boards revise the method for funding Adult Education Centres so that they are no longer given an incentive, even indirectly, to punish repeated student absences with expulsion;

78. that school boards ensure that the adult sector establishes francization programs that are better adapted to the needs of young immigrants, meaning courses that are adapted to mastering the subjects required for obtaining their HSD;

79. that the MELS, in collaboration with the school boards, take the steps necessary to enable students in difficulty to obtain their secondary school diploma in the youth sector, to the extent possible, and thereby reverse the current trend of secondary schools guiding this category of students to the adult sector;

80. that faculties of education include compulsory courses or training on antiracism and intercultural education in their basic teacher training programs, and that school boards include them in their continuing education programs;

81. that the MELS, in its publication Teacher Training. Orientations. Professional Competencies (MEQ, 2001) add a thirteenth competency to the twelve professional competencies that future teachers must acquire: the capacity to become engaged in a process of openness to diversity using an antiracism and intercultural approach;

82. that faculties of education establish Equal Access Employment Programs designed to increase the representation of members of ethnic and racialized minorities among their teacher training students;

83. that faculties of education conduct recruiting campaigns, including incentive measures like scholarships, designed to convince members of ethnic and racialized minorities to opt for university programs leading to teaching at the preschool, primary and secondary levels.

THE YOUTH PROTECTION SYSTEM

THE COMMISSION RECOMMENDS:

84. that the ministère de la Santé et des Services sociaux (MSSS), in cooperation with the ministère de l'Éducation, du Loisir et du Sport (MELS) provide professionals in the education, healthcare and social services sector with intercultural and antiracism training designed to reduce incorrect readings of the family dynamics prevalent among youth of racialized and immigrant minorities;

85. that the CSSS, in collaboration with youth centres and experts who specialize in intercultural and antiracism intervention, take on a leading role in establishing this training;

86. that DYPs develop indicators that allow their social workers to assess the situations for which an intercultural consultation with an expert is required at each step in the youth protection system;

87. that the MSSS ensure that formal partnerships with youth centres, first-line services and community organizations become the standard for youth protection, and secure its funding;

88. that youth centres and CSSS establish more formal partnerships with community organizations, when the situation allows, so that interventions with migrant or racialized families are supported by a multidisciplinary and intersectorial team with a view to ensuring that the services are adapted to the needs of this clientele;

89. that all DYPs adopt a reference document stating the guidelines for integrating the intercultural and antiracism approach to their clinical evaluation processes, and that they ensure that the orientations and principles of this document are well understood and applied by the social workers;

90. that youth centres include their commitment to respecting the principles of an antiracism and intercultural approach in a policy, their mission statement and their code of ethics;

91. that youth centres establish procedures intended to ensure that the intercultural and antiracism approach is taken into account at all levels of the organization;

92. that youth centres that serve a clientele from ethnic and racialized minorities make an intercultural and antiracism course compulsory for all of their employees;

93. that youth centres develop and apply an interview protocol and hiring examinations that ensure that the instruments and selection criteria used for the purposes of recruiting in fact measure the intercultural and antiracism competencies of candidates for all job categories, including executive positions.

THE COMMITMENTS OF THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

THE COMMISSION UNDERTAKES TO:

1. ensure that the courses on racial profiling, in particular those given to its own personnel assigned to complaint handling, are accompanied by follow-up procedures intended to measure their effectiveness, and where necessary, to make the appropriate corrections;
2. design and implement an intervention model that, in the case of complaints with a systemic dimension, provide for the formation of a team that brings together complementary expertise and whose members work in collaboration during every stage of the complaint processing;
3. pay careful attention, when handling complaints of racial profiling, to elements of contextual evidence, such as statistical data revealing recurring suspicious patterns in police interventions or organizational policies with potentially discriminatory effects;
4. be more inclined, when handling complaints of racial profiling, to propose or demand, as the case may be, corrective measures of a structural nature;
5. make accessible, in the public interest, the settlements obtained by mediation, while protecting the anonymity of the parties;
6. guarantee better follow-up with complainants in order to keep them better informed of the progress of the handling of their complaint;
7. reduce the time involved in handling complaints of racial profiling at every stage to the extent possible;
8. prioritize the option of referring cases of racial profiling to the Human Rights Tribunal on their merits in its decision-making process, even in the absence of collaboration from the police officers involved during the investigation stage;
9. pursue its efforts to have municipalities, including the City of Montréal and the SPVM instruct their police officers to collaborate in the Commission's investigations of racial profiling, in particular by providing testimony when requested;
10. remain attentive so that community organizations that it encountered during the consultation, and to continue to work in collaboration with them;
11. carry out rigorous follow-up in the future in order to ensure that the recommendations that it has addressed to various institutions in this report are in fact implemented.

LIST OF WRITTEN SUBMISSION RECEIVED DURING THE RACIAL PROFILING PUBLIC HEARINGS*

Alliance of South Asian Communities

Association des centres jeunesse du Québec (ACJQ)

Barreau du Québec

Esther Belony

Léonel Bernard and Christopher McAll, Centre de recherche de Montréal sur les inégalités sociales, les discriminations et les pratiques alternatives de citoyenneté (CREMIS)

Black Coalition of Québec

Black Communities Demographic Project, McGill Consortium for Ethnicity and Strategic Social Planning

Ronald Boisrond

Borough of Pierrefonds-Roxboro

Centre for Research-Action on Race Relations (CRARR)

Josée Charrette, researcher, Université de Montréal

W.-J. Closs, former Chief of police – Kingston, Ontario

Coalition contre la répression et les abus policiers (CRAP)

Commission scolaire de la Région-de-Sherbrooke

Concordia Student Union

Conseil de l'École nationale de police du Québec

Conseil ethnique des droits humains

Sarah Dufour, researcher, Université de Montréal

Équipe RDP (Rivière-des-Prairies)

Fédération des commissions scolaires du Québec (FCSQ)

Fédération des femmes du Québec (FFQ)

Forum Jeunesse de l'Île de Montréal

Immigration-Québec – Estrie, Mauricie et Centre-du-Québec

Jamaica Association of Montreal Inc.

La Maisonnée Inc. – Service d'Aide et de liaison pour Immigrants

LaSalle Community Prevention Project

LaSalle Multicultural Resource Centre

Ligue des droits et libertés

Maison d'Haïti

Marie McAndrew, researcher, Chaire de recherche du Canada sur l'Éducation et les rapports ethniques, Université de Montréal (CEETUM)

Montreal Consortium for Human Rights Advocacy Training

Mouvement Action Justice

Aly Ndiaye

Official Opposition - Ville de Montréal

Maryse Potvin, researcher, UQAM, Centre Métropolis du Québec Immigration et métropoles (CMQ-IM)

Project X

Projet Montréal

Regroupement des centres d'amitié autochtones du Québec

Segal Centre for Performing Arts

Service de protection des citoyens de Laval – Département de police

Syndicat étudiant du Cégep Marie-Victorin

Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)

The Iritical Soldiers Rastafari Establisment of Montreal

Third Avenue Resource Centre

Ville de Montréal

Dorothy Williams

Youth in Motion

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* A number of presenters did not wish to be identified publicly

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RESEARCH for ACTION

What impact does the presence of school police have on school safety?

POLICE IN PENNSYLVANIA SCHOOLS SERIES

Part 1 of a 3 part series | MORE AT: *researchforaction.org/police*

Concerns for student safety are a commonly cited reason for the presence of police in schools. But as the nation grapples with the appropriate roles and responsibilities of police more broadly, the time is right to shine a light on what we know about the effects of police in schools. This brief summarizes the research related to this question. ***Research is inconclusive about whether police presence in schools improves safety.***

By "police presence" we are referencing school police officers, School Resource Officers (SROs), and local law enforcement that may be called to schools. Though most research focuses on police presence generally, we note below when the research focuses on a specific role, such as SROs. Findings provide insight into the potential impact of police presence but may or may not be generalizable across school security personnel roles.

Research is inconclusive about the effect of police presence on crime or violence. The Congressional Research Service reported in 2013 that existing studies lacked methodological rigor and, therefore, that the effect of SROs on school safety was still unclear.[1] The findings of the limited existing studies show a mix of results, with some showing the presence of law enforcement to be associated with an increase in crime and violence and some showing association with a decrease in crime and violence.[2]

Evidence is limited regarding whether police presence reduces the likelihood of a school shooting. Some advocates of school police presence argue that police officers are more prepared to reduce or prevent violence due to specialized training that is not provided to school staff.[3] Researchers have highlighted that schools with police on campus may be more likely to have written emergency plans about how to handle potential school shootings but have not found conclusive evidence that police presence reduces school shootings.[4] An analysis of about 200 school shooting incidents found that at least 68 of those schools employed a police officer or security guard; almost all of those incidents ended before police or security interceded.[5]

School Security Personnel: Defined by the Pennsylvania Department of Education

School Police Officer – A law enforcement officer at a school, employed or contracted directly by the school. The officer's responsibilities are established by the school or district.

School Resource Officer – A law enforcement officer employed by a law enforcement agency and stationed at a school through an agreement between the agency and school or district.

School Security Guard – An individual stationed at a school for safety duties but does not have the powers and responsibilities of school police officers.

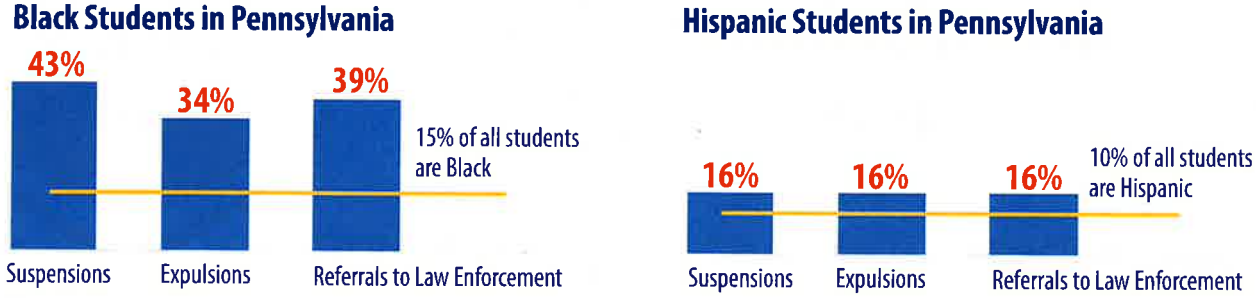
School security personnel may be armed or unarmed. Schools may have additional police presence from local police who are not contracted with the school.

Police presence is associated with increased student arrests and referrals to law enforcement.[6] Law enforcement has increasingly been involved in student conduct issues that historically were resolved by school administrators.[7] At schools with greater police presence, students are arrested at higher rates for reasons like "disorderly conduct", suggesting that students who encounter police at school may be more likely to be criminally charged for behaviors otherwise seen as "normal adolescent misbehavior."[8] Researchers have extensively documented both short and long-term negative impacts on youth who experience criminal charges.[9]

Police presence is also associated with increased rates of exclusionary discipline, or out-of-school suspensions and expulsions.[10] Although evidence is mixed,[11] a systematic review found that SRO presence was associated with 21% more incidents

of exclusionary discipline.[12] Exclusionary discipline is also associated with significant negative outcomes including school drop-out and increased likelihood of future involvement with the criminal justice system.[13]

School-based arrests, exclusionary discipline, and their associated negative consequences disproportionately affect students of color and students with disabilities.[14] Research has also found that Black students are disciplined and arrested at greater rates, even for the same or less serious behavior as white students.[15]



Exclusionary discipline. In Pennsylvania, although 15% of students are Black and 10% are Hispanic, Black and Hispanic students make up 43% and 16% of all out-of-school suspensions, respectively. Black and Hispanic students make up 34% and 16% of all expulsions, respectively.[16]

School-based arrests. RFA's analysis of Civil Rights Data Collection found that, while 15% of all PA students are Black and 10% are Hispanic, 39% of students who received referrals to law enforcement from PA schools are Black and 16% are Hispanic.[17] Pennsylvania has the third highest student arrest rate in the country and is second highest for both Black and Hispanic student arrests.[18]

Available evidence shows mixed perceptions from teachers about how police impact safety. Some teacher unions across the country, including the American Federation of Teachers, have recently called for reforming or removing police from schools.[19] A recent national EdWeek survey found that about half of teachers completely or partially disagreed that *armed* police officers belonged in the schools in their district, although most teachers opposed removing armed police officers from U.S. schools entirely.[20] In Pittsburgh, a recent survey found that most members of the Pittsburgh Federation of Teachers opposed eliminating police from Pittsburgh schools.[21]

Students have mixed perceptions about the impact of police presence on their safety.[22] In one study, some students reported that their school was already safe or that students might commit crimes regardless of SRO presence.[23] A survey of California high school students found that 61% of White students reported feeling "pretty much" or "very much" safer with the police officer at their school compared to 41% of Black students – a statistically significant difference.[24] These disparities in students' perceptions may be influenced by complex contextual factors and linked to history and differences in experiences with police inside and outside of schools.[25]

More information about the impact of police in schools can be found through ACLU's comprehensive resource https://www.endzerotolerance.org/

Implications

School decision-makers should clearly define their goals for school safety and weigh the purposes, costs, and consequences of existing and potential strategies. When deciding whether to continue to invest in school policing, school decision-makers should consider the limited evidence on the effectiveness of police presence on school safety and the evidence of the negative impact of police presence on students of color.

Future research should rigorously evaluate existing and alternative strategies for school safety. In the third part of this series from RFA, we provide concrete examples of alternative approaches for school safety.

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Civil and Political Wrongs: The Growing Gap Between International Civil and Political Rights and African Canadian Life

A Report on the Canadian Government's Compliance with the *International Covenant on Civil and Political Rights*
(June 2015)

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PART I - INTRODUCTION

Identification of Canadian Civil Society Organization

Established in 1994, the African Canadian Legal Clinic (ACLC) is a community-based not-for-profit organization with status at the United Nations Economic and Social Council (ECOSOC) that is committed to combating systemic anti-Black racism in Canadian society. The ACLC represents and advocates on behalf of the African Canadian community through: (i) involvement in groundbreaking test-cases and interventions involving anti-Black racism, human rights and the equality provisions guaranteed in Canadian human rights legislation such as the *Canadian Charter of Rights and Freedoms* [*Charter*];[1] (ii) monitoring significant legislative, regulatory, administrative and judicial developments; and (iii) engaging in advocacy, law reform and legal education.

In addition to its legal services, the ACLC also operates seven social service programs, namely: the African Canadian Youth Justice Program; the African Canadian Youth Outreach Worker Program; the Knowledge of Self Group Programs; the African Canadian Justice Program; the African Canadian Parent Support Group; the Employment Skills and Job Readiness Program, the Youth in Transition Program; the Community Justice Worker Program, and; Cultural Competency Training. These programs are all aimed at assisting and improving the lives of African Canadian children, youth, adults and families. The ACLC's experience with these agencies has given it unique insight into the issues affecting the African Canadian community in the Greater Toronto Area, the province of Ontario, and throughout Canada. Through its community involvement, the ACLC has been and continues to be at the forefront of ground-breaking legal and social justice developments.

African Canadians in 2015 and the Immediate Context of this Report

Over the course of the last year, anti-Black violence at the hands of law enforcement has been met and resisted in the United States under the clarion call of Black Lives Matter. However, the struggle for recognition and respect for the rights, humanity and dignity of people of African descent also stretches north of the US boarder and into Canada.

Within Canada, the Black Lives Matter Movement has gripped major urban centres such as Toronto, Ottawa, Hamilton and Halifax, as well as their surrounding suburbs. The Movement has emerged as a leading and inspirational force for communities calling for an end to violence against Black people at the hands of state actors in Canada. The current and most charged manifestation of this anti-Black violence has come in the form of a practice known as "carding" in Toronto. Carding is the practice of the Toronto police of stopping, questioning and documenting people who are not suspected of a crime, with a significant disproportion of these police encounters being with African Canadians.

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[1] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

On this backdrop, the Black Lives Matter Toronto (BLMTO) Movement, along with organizations like the ACLC, and the Anti-Black Racism Network have galvanized the African Canadian community to push for fundamental structural changes that would reduce and eliminate anti-Black racism in Canadian policing and the wider criminal justice system. Specifically, they have rallied community support for the elimination of carding and racial profiling, and reform of both the Special Investigations Unit and the Office of the Independent Police Review Director, all with the aim to substantially enhance the ability to hold police officers more accountable for incidents of anti-Black racism and violence against African Canadians in Ontario. These organizations and collectives have also organized and/or participated in various demonstrations, community forums, workshops and panel discussions which have successfully leveraged the media to raise public awareness about the multi-dimensional and dynamic experiences of anti-Black oppression faced by African Canadians across the GTA.

Another critical backdrop for this report is the United Nations International Decade for People of African Descent. The International Decade, proclaimed by the *UN General Assembly Resolution 68/237* is to be observed from 2015 to 2024. It is being recognized by the UN as providing a solid framework for the United Nations, Member States, Civil Society and all other relevant actors to join together with people of African Descent and take effective measures for the implementation of a UN-adopted Programme of Activities in the spirit of the Decade's theme: **Recognition, Justice and Development**. Activities of the Decade are expected to be organized at the state and grassroots levels with the aim of underlining the important contribution made by people of African Descent to global societies and to propose concrete measures to promote our full inclusion and to combat racism, racial discrimination, xenophobia and related intolerance faced by African Descendants. It is fitting, then, that this report is being provided to the UN Human Rights Committee on this first year of the UN International Decade for People of African Descent.

Finally, before the end of this year, 2015, citizens across Canada will be called to vote in a federal general election that will have significant implications for the direction of the country. As such, this report offers the Human Rights Committee an opportunity to appreciate the some of the issues most pressing to African Canadians as they prepare to direct the future of this country in ways that enhance the well-being and prospects of Blacks in Canada.

These three contextual factors speak to the timeliness and urgency of providing this report on Canada's compliance with the *International Covenant on Civil and Political Rights* (*ICCPR*) to the Human Rights Committee at this time. In light of this context, the African Canadian Legal Clinic, is pleased to have identified in this report key strategic and critical solution-based recommendations to address the current crisis facing the African Canadian community. These recommendations reflect the ongoing and growing need for the Canadian government and its agencies to undertake more fulsome, comprehensive, sustainable and long-term initiatives to support the health, well-being and development of the African Canadian community.

Canada's African Canadian Population, its History and Significance

According to Canada's 2011 Census[2] just fewer than 945,700 individuals identified themselves as Blacks, the third largest visible minority group. African Canadians make up 15.1% of the visible minority population and 2.9% of the total Canadian population.

In order to understand contemporary anti-Black racism in Canada, it is necessary to first understand its history. Canadians tend to downplay the role of slavery in our nation's history. "Unlike the United States, where there is at least an admission of the fact that racism exists and has a history, in this country one is faced with a stupefying innocence."[3] Slavery, however, existed in Canada from the 17th century until its abolition in 1834, for a total of 206 years.[4] During this time, persons fleeing from slavery in the United States found themselves either re-enslaved or living a truncated version of freedom. After slavery was abolished, African Canadians had to contend with slavery's afterlife by being forced to face legal and de facto segregation in housing, schooling, and employment, and exclusion from public places such as theatres and restaurants.[5] These racist practices were reinforced by a justice system that often served to keep African Canadians "in their place."[6]

Despite their oppressed and enslaved status, African Canadians made significant contributions to early Canadian society. In the war of 1812, for example, African Canadians fought in the British army in defense of Canadian borders against the United States.[7] Similarly, in 1837, African Canadians assisted in quashing a rebellion in Upper Canada against the proposed unification of both Upper and Lower Canada by the British.[8] The contribution of African Canadians extended beyond military support; Canadians of African descent were involved in politics, for example, where they helped join the province of British Columbia to the Federation of Canada,[9] and in education, where they established successful settlements and founded schools that provided education to children of all races.[10] These contributions, however, are all but absent from educational curricula and public discourse on Canada's history.[11]

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[2] Statistics Canada, "Immigration and Ethnocultural Diversity in Canada", 2011. Online: http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm

[3] Dionne Brand, *Bread Out of Stone* (Toronto: Coach House Press, 1994).

[4] Afua Cooper, *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montréal* (Toronto: HarperCollins Publishers, 2006).

[5] Robin Winks, *The Blacks In Canada: A History*, 2d ed., (Montreal: McGill- Queen's Press, 1997).

[6] *Christie v. York Corporation* , [1940] S.C.R. 139; *R. v. Desmond* , (1947) 20 M.P.R. 297 (N.S.S.C.); *Hill v. Camden and Zone* , 11 U.C.B.Q. 573 (Ont. Q.B.).

[7] Lawrence Hill, *Trials and Triumphs: The Story of African Canadians* , (Toronto: Umbrella Press, 1993) at 19, 20 and 53.

[8] *Ibid.* at 54.

[9] *Ibid.* at 41-42; Milfflin Wistar Gibbs was part of the Victoria City Council and played a role in encouraging British Columbia to become a part of Canada, which eventually happened in 1871.

[10] *Ibid.* at 22, 23 and 35. The Dawn settlement, Chatham, Ontario was established by Josiah Henson in the 1840s. Another prominent Black school, the Buxton Mission School in Ontario, was established in 1850.

[11] Four-Level Government/African Canadian Community Working Group, *Towards a New Beginning: The Report and Action Plan of the Four-Level Government/African Canadian Community Working Group* (Toronto: African Canadian Community Working Group, 1992) at 15: "The story of people of African origin in Canada is a long one, predating Confederation itself by more than two centuries. Yet few Canadians know of this story and fewer still are aware of the contributions which this ethnic minority group has made over these centuries to the development of Canadian society as we know it today. One tragic consequence of this ignorance is that it has denied Black

Canada's refusal to accept its racist past and simultaneous failure to recognize the historical contributions of people of African descent is partly responsible for the perpetuation of contemporary anti-Black racism. Specifically, denying Canada's history of slavery, segregation and racial oppression means that the modern day socio-economic circumstances of Canada's Afro-descendant population cannot be placed in their proper historical context; at the same time, neglecting the numerous contributions of members of the African Canadian community leads to the portrayal of this community as "good-for-nothing." The "blame" for the disadvantaged position occupied by African Canadians is thus placed only on the shoulders of the African Canadian community itself.

Left without a reasonable historic explanation for the disadvantaged position occupied by the African Canadian community and any acknowledged record of African Canadian accomplishments, it is easy to explain the marginalized position of the African Canadian community by reverting to racist stereotypes (e .g. Afro-descendants as unintelligent, lazy, savage, overly aggressive and prone to anti-social or criminal behaviour).[12] This continuing legacy of Canada's racist past was acknowledged by Dr. Doudou Diéne, the UN Special Rapporteur on Racism, upon his visit to Canada in 2004:

> Canadian society is still affected by racism and racial discrimination. Because of its history, Canadian society, as in all the countries of North and South America, carries a heavy legacy of racial discrimination, which was the ideological prop of trans-Atlantic slavery and of the colonial system. The ideological aspect of this legacy has given rise to an intellectual mindset which, through education, literature, art and the different channels of thought and creativity, has profoundly and lastingly permeated the system of values, feelings, mentalities, perceptions and behaviours, and hence the country's culture. [13]

Racist stereotypes are the result but also the cause of racist practices. In the past, stereotypes of Black people were used to justify slavery and segregation.[14] Today they provide the basis for discriminatory policies and practices that violate the civil and political rights of African Canadians. These include the over-policing of African Canadian communities, police brutality, disparities in sentencing and policing accountability institutions absolving law enforcement

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Canadians the full measure of their own self-worth in the way that other communities ... have been able to enjoy." See also TDSB, "Improving Success for Black Students: Questions and Answers".

[12] Earl Hutchison, *The Assassination of the Black Male Image* , (New York: Touchstone, 1997); Esmeralda Thornhill, *Focus on Racism: Legal Perspectives From a Black Experience*, (Ottawa: National Judicial Institute, 1995) at 81, 83, 86, and 87; Frances Henry and Carol Tator, *Racist Discourse in Canada's English Print Media* (Toronto: The Canadian Race Relations Foundation, 2000).

[13] Doudou Diène, Report by Mr. Doudou Diène, *Special Rapporteur on contemporary forms of racism , racial discrimination, xenophobia and related intolerance – Mission to Canada, UNHRC, E/CN.4/2004/18/Add.2 (2004)* at para. 68.

[14] Richard Delgado, ed., *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995) at 547-548; Frances Henry and Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* (Toronto: University of Toronto Press, 2002) at 163-202.

agencies of wrong-doing when the victim is African Canadian.[15] These phenomena reveal a legislative, administrative and judicial focus on the perceived deviance of members of the African Canadian community and ignorance of their underlying socioeconomic and historic causes.

Anti-Black Racism is No Secret to Canadian Authorities

Despite African Canadians having a presence in Canada since the early 1600s, and notwithstanding Canada's 2014 ranking as one of the top 10 countries in the world according to the 2014 UN Human Development Index[16], anti-Black racism continues to dominate the experience and encumber the civil and political rights of African Canadians.[17]

The African Canadian Legal Clinic (ACLC) defines anti-Black racism in the following way:

> Anti-Black racism is the racial prejudice, stereotyping and discrimination that is directed at people of African descent, rooted in their unique history and experience of enslavement. It is manifested in the legacy and racist ideologies that continue to define African descendants' identities, their lives and places them at the bottom of society and as primary targets of racism. It is manifested in the legacy of the current social, economic, and political marginalization of African Canadians in society such as the lack of opportunities, lower socio-economic status, higher unemployment, significant poverty rates and over-representation in the criminal justice system. Anti-Black racism is characterized by particularly virulent and pervasive racial stereotypes. Canadian courts and various Commissions have repeatedly recognized the pervasiveness of anti-Black stereotyping and the fact that African Canadians are the primary targets of racism in Canadian society.

The presence and pervasiveness of anti-Black racism in Canada has been recognized by Canadian authorities and institutions since at least the early 1990s. Anti-Black racism was documented by Stephen Lewis who, in 1992, reported the following to the Premier of Ontario:

> First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black

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[15] Ellis Cashmore, ed., *Out of Order? Policing Black Populations* (London: Routledge, 1991); Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2005) at 18.

[16] United Nations Development Programme, *Human Development Reports – Canada.* See online: http://hdr.undp.org/en/countries/profiles/CAN

[17] Joseph Mensah, *Black Canadians: History: Experience, Social Conditions*, 2nd ed. (Winnipeg: Fernwood Publishing, 2010)

> kids who are disproportionately dropping out, it is housing communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non - professional, on whom the doors of upward equity slam shut. Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target.[18]

The Ontario government's 2008 *Review of the Roots of Youth Violence* report found that this statement "remains apposite."[19]

Additionally, in 2005 the Supreme Court of Canada in the decision of *R v. Spence*[20] accepted the existence of widespread racism, and in particular, the presence of anti-Black racism in Canadian society.[21] The Court did this when it endorsed the following portion of the *R. v. Parks* decision in which Justice Doherty of the Ontario Court of Appeal stated:

> Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.[22]

Furthermore, similar to its 2007 observations, in its 2012 concluding observations on the state of affairs in Canada, the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) indicated to the Canadian Government that:

> [T]he Committee is concerned that African Canadians continue to face discrimination in the enjoyment of social, economic and cultural rights, in particular in access to employment, housing, education, wages, and positions in the public service.[23]

The current report will demonstrate that the Canadian Government's compliance with the

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[18] Stephen Lewis, *Stephen Lewis Report on Race Relations in Ontario*, (Toronto: Office of the Premier, 9 June, 1992) at 2.

[19] Ministry of Children & Youth Services, The Review of the Roots of Youth Violence by Roy McMurtry, Alvin Curling, (Toronto: Ministry of Children & Youth Services, 2008) at 39.

[20] *R v. Spence*, [2005] 3 SCR 458 at 52.

[21] *R v. Williams*, [1998] 1 SCR 1128 at 21-22, 28; *R. v. S. (R.D.)*, [1997] 3 SCR 484 at 47, 57.

[22] *R v. Parks*, 1993 CanLII 3383 (ON CA); See also *R v. Brown*, 2003 CanLII 52142 (ON CA) at 7-9, 44 and *Longueuil (Ville de) c Debellefeuille*, 2012 QCCM 235 (CanLII) at 102-106 for discussion of anti-Black racism in the context of racial profiling; *Peart v. Peel Regional Police Services*, 2006 CanLII 37566 (ON CA) at 42.

[23] *Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session*, UNCERD, 2012, Supp No 18, UN Doc A/67/18 (2012) at 11. Note that these observations are almost identical to the ones the ones that CERD arrived at in its 2007 report on racial equity in Canada: *Elimination of Racial Discrimination: Concluding Observations, Canada*, 25 May 2007, CERD/C/CAN/CO/18 at 20-21.

***International Covenant on Civil and Political Rights* (*ICCPR*) has been woefully inadequate and has had the impact of supporting and even perpetuating anti-Black racism within Canada.**

Canada's National Consultations Regarding Compliance with the *ICCPR*

Canada's sixth report to the United Nations Human Rights Committee (the Committee) on compliance with the *International Covenant on Civil and Political Rights* (*ICCPR*)[24] states that, "[m]ore than 200 non-governmental organizations were invited by the Government of Canada to give their views on the issues to be covered in the federal portion of the report. No responses were received."[25] The ACLC, though Canada's only African Canadian-servicing organization with ECOSOC status[26], was not offered the opportunity to participate in consultations regarding the drafting of the government of Canada's record of compliance with its obligations under the *ICCPR*.

It is important to note that nowhere in Canada's 36-page report or 44-page core documents forming part of the reports of State parties does the Government of Canada refer to African Canadians or "visible minorities" of African descent.[27]

PART II: VIOLATIONS OF SPECIFIC PROVISIONS OF THE *ICCPR*

Overview: African Canadian Civil and Political Rights

The consideration of Canada's sixth report to the Committee on the Occasion of the Review of Canada's Periodic Reports under the *ICCPR* presents an important opportunity to draw the Committee's attention to the persistent and growing civil and political exclusion of African Canadians.

The occasion of the review the Government of Canada's record of compliance under the *ICCPR* provides an important reminder that there are still a number of areas where significant improvements in the Government of Canada's rights performance are needed from the perspective of a marginalized community. The African Canadian experience continues to be one of extreme marginalization and disadvantage; restricted access to housing; racial profiling in policing, security, education and child welfare; criminalization; over-representation in the

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[24] International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 UN GAOR Supp No. 16 at 52, UN Doc A/6316 91966), 999 U.N.T.S.171 entered into force March 23, 1976 [*ICCPR*].

[25] Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013) at 5.

[26] Economic and Social Council, List of non-governmental organizations in consultative status with the Economic and Social Council as of 1 September 2014 at 9. Online: http://csonet.org/content/documents/E-2014-INF-5%20Issued.pdf

[27] Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013); Canada, Government of Canada, "Core document forming part of the reports of State parties) (UN Doc HRI/CORE/CAN/2013) (28 January 2013).

criminal justice system; high levels of unemployment; and disproportionate and extreme poverty.[28] This alarming state of affairs contravenes a number of Canada's obligations under the *ICCPR*.

Article 2 – Race-based Disaggregated Data: A Necessity for *ICCPR* Compliance

According to the *UN Human Rights Committee General Comment No. 31 (2004)*, Article 2 allows a State Party to change its domestic law or practice to meet the standards imposed by the Covenant's substantive guarantees. The requirement under Article 2, Paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. According to this Comment, a failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State. Because the Government of Canada does not systematically collect and make publicly accessible race-based disaggregated data, it is in violation of Article 2 of the *ICCPR*.

The violation of civil and political rights of African Canadians is invisibilized in Canada because governmental bodies, although aware that acts of non-state and state violations of the *ICCPR* occur, do not systematically and specifically name and address violations of rights to physical integrity, liberty and security of the person and individual liberties of African Canadians. This is most evidenced in Canada's intransigent reluctance to collect race-based disaggregated data; a problem that has already been identified by both the United Nations' Committee on the Rights of the Child and Committee for the Elimination of Racial Discrimination in 2012. In both instances, the Committees recommended the collection of race-disaggregated data in their latest concluding observations on Canada. The Committee on the Rights of the Child's recommendation was articulated as follows:

> The Committee recommends that [Canada] establish a comprehensive and systematic mechanism of federal data collection, analysis, monitoring, and impact assessment covering all areas of the Optional Protocol. The data should be disaggregated by , inter alia, sex, age, national and ethnic origin, geographical location, indigenous status and socio-economic status, with particular attention to children in the most vulnerable or marginalized situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.[29]

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[28] Doudou Diène, *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada,* UNHRC, E/CN.4/2004/18/Add.2 (2004) at para 72.

[29] Committee on the Rights of the Child: Canada, "Concluding observations on the initial periodic report of Canada, adopted by the Committee at its sixty-first session" (17 September-5 October 2012) at 2. Online: http://uhri.ohchr.org/document/index/128296b5-0662-45c7-a3e7-543a0e0837da

The Committee on the Elimination of Racial Discrimination's almost identical recommendation reads as follows:

> In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendation that the State party collect and, in its next Periodic Report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including on Aboriginal (indigenous) peoples, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.[30]

By refusing to systematically collect and make publicly accessible race-disaggregated data, the Canadian government, its agencies and institutions are active or complicit agents in the violation of the civil and political rights of African Canadians. The practice of statistically invisibilizing African Canadians by refusing to collect and publicly report race-based disaggregated data is a violation of Article 2 Paragraph 2 of the *ICCPR* which requires states to undertake necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the *ICCPR*. The collection, analysis and accessible dissemination of such data is necessary for determining whether the Government of Canada actively is respecting and recognizing African Canadians' civil and political rights under the *ICCPR*.

In light of this, we, the African Canadian Legal Clinic respectfully invite the Committee to take note of, and demand answers regarding, the state's indifference to and non-recognition of the extreme barriers faced by African Canadians in realizing their civil and political rights.

Articles 7 and 10 – Over Incarceration and Cruel and Inhuman Punishment

According to the *UN Human Rights Committee, General Comment 20 (1992)*, Article 7 of the *ICCPR* should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, the Committee advises that State parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by Article 7 as well as appropriate redress.

According to the *UN Human Rights Committee, General Comment 21 (1992)*, Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in Article 7 of the *ICCPR*. The Comment goes further to state that not only may

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[30]Committee on the Elimination of Racial Discrimination: Canada, "Concluding observations of the Committee on the Elimination of Racial Discrimination at its eightieth session (13 February – 9 March 2012). Online: http://uhri.ohchr.org/document/index/f2d0c76b-a3fb-4d3d-a6e7-f260ac785a5f

persons deprived of their liberty not be subjected to treatment that is contrary to Article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Finally, the Comment also notes that persons deprived of their liberty enjoy all the rights set forth in the *ICCPR*, subject to the restrictions that are unavoidable in a closed environment.

For the reasons that will be outlined below, the Committee should find that the Government of Canada is violating its obligations under Articles 7 and 10 of the *ICCPR* and recommend immediate and decisive action to address this injustice.

Disproportionate Rates of African Canadian Incarceration and Anti-Black Racism in Prisons

African Canadians are "disproportionately represented"[31] in Canadian correctional facilities and the rate of over-incarceration of African Canadians has been accelerating at a time when Canada is experiencing historically low rates of crime.[32] As a result, the deliberate policies and inadequate resources devoted to addressing the over-incarceration of African Canadians have led to increasingly inhumane conditions within the Canadian prison and jail system that frequently contravene both Articles 7 and 10 of the *ICCPR*.

In 2012, the United Nations Committee on the Elimination of Racial Discrimination expressed concern over the over-representation of African Canadians in prisons:

> The Committee is concerned at reports that African Canadians, in particular in Toronto, are being subjected to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population, there.by contributing to the over-representation of African Canadians in the system of criminal justice of Canada.[33]

The Committee recommended that Canada "take necessary steps" to prevent over-incarceration, and train actors in the criminal justice system including police and judges on the principles of the *International Convention on the Elimination of All forms of Racial Discrimination* of which Canada is a signatory.[34] In 2005, the Committee released its *General Recommendation No. 31 - Prevention of Discrimination in the Administration and Functioning of*

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[31] Correctional Service Canada, *A Profile of Visible Minority Offenders in the Federal Canadian Correctional System*, Authors Shelley Trevethan and Christophe J Rastin (Ottawa: Correctional Service Canada, June 2004) online: <http://www.csc-scc.gc.ca/research/r144-eng.shtml>.

[32] The country's overall crime rate is at its lowest level since 1969.
Statistics Canada, Canadian Megatrends, *Canada's crime rate: Two decades of decline* (Ottawa: Statistics Canada) online: Statistics Canada <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015001-eng.htm>.

[33] Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67ll8 (2012) at 10.

[34] Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67ll8 (2012) at 10.

the Criminal Justice System.[35] In that document, the Committee recognized that the number and percentage of persons belonging to particular groups who are held in prison or preventive detention is a possible indicator of racial discrimination.[36]

Canada's Periodic Report on compliance with the *ICCPR* only briefly refers to the right to liberty and security and treatment of persons deprived of their liberty in relation to the incarceration of youth[37] and victims of crime[38]. The issues posed by the Committee remain urgent as Canada clarifies its effort to:

> (a) adopt effective measures to reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty; (b) increase the capacity of treatment centres for prisoners with intermediate and acute mental health issues; (c) limit the use of solitary confinement as a measure of last resort, and (d) abolish the use of solitary confinement for persons with serious mental illness.[39]

In a May 2015 report entitled, "Administrative Segregation in Federal Corrections: 10 Year Trends", by the Government of Canada's Office of the Correctional Investigator (OCI)[40] it is revealed that since May 31, 2005, the population of African Canadians in federal prisons has increased by 77.5%, whereas the white population decreased by 6.8%. As noted in the report, Black segregation admissions have grown at a faster rate than the incarceration rate of the population of Black offenders.[41] Furthermore, the Black inmate population is young. Approximately one-half of Black inmates are 30 years of age or younger; only 8% are over the age of 50. Moreover, the incarceration of African Canadian young people is not unique to the federal prison system, as the population of African Canadian boys (under 18) in Ontario's youth jails is four times higher than what they represent in the general young male population of the province.[42]

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[35] Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session (2005) A/60/18 at 1(e).

[36] Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session (2005) A/60/18 at 1(e).

[37] Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013) at para 31, 67, 105, 106, 113, 147.

[38] Canada, Government of Canada, "Core document forming part of the reports of State parties) (UN Doc HRI/CORE/CAN/2013) (28 January 2013) at 16 and 36.

[39] Human Rights Committee, "List of Issues in Relation to the Sixth Periodic Report of Canada," (UN DOC CCPR/C/CAN/Q/6) (21 November 2014) at 3.

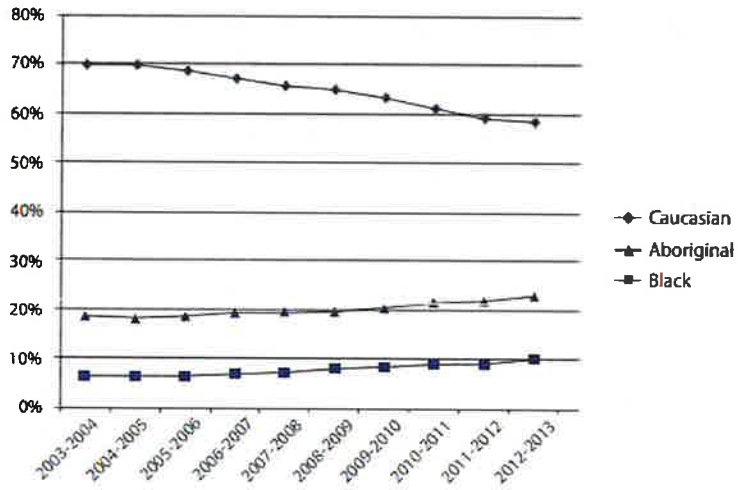
[40] As the ombudsman for federally sentenced offenders, the Office of the Correctional Investigator serves Canadians and contributes to safe, lawful and humane corrections through independent oversight of the Correctional Service of Canada by providing accessible, impartial and timely investigation of individual and systemic concerns.

[41] Online: http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20150528-eng.pdf

[42] Jim Rankin, Patty Winsa, "Unequal Justice: Aboriginal and black inmates disproportionately fill Ontario jails", *Toronto Star*. See online:

This latest data from the OCI adds to observations previously made by the Correctional Investigator which, in 2013, noted that African Canadians are one of the fastest growing sub-populations in federal corrections.[43] African Canadian inmates now account for 9.5% of the total prison population while representing just 2.9% of the general Canadian population.[44] Between March 2003 and March 2013, the rate of federally incarcerated African Canadians increased by 80% from 778 to 1,403.[45] African Canadian federally sentenced inmates have increased every year since 2003, growing by nearly 90%. Canada's Correctional Investigator has also noted that white inmates actually declined by 3% over this same period.[46]

10 Year Offender Population Trends: (Incarcerated and Community)



Correctional Investigator, Government of Canada,
Annual Report of the Office of the Correctional Investigator, 2012-2013.

Once in the federal prison system, African Canadians experience some of the worst treatment as a group. From May 2005 to May 2015, the number of segregation admissions for African Canadian inmates has more than doubled, increasing by 100.4%, while it has decreased for the white population by 6.1%. Additionally, African Canadian offenders who were admitted to

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http://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html#

[43] Sentences of two or more years in Canada are served in federal prisons.
Correctional Service Canada, *Corrections and Conditional Release Statistical Overview* (Ottawa: Public Works and Government Services Canada, 2004) at 47-8; Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013).

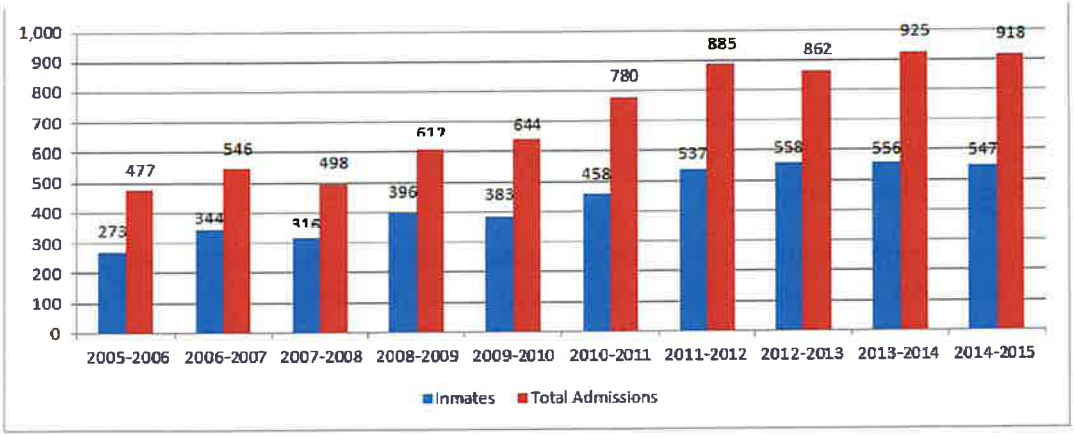
[44] Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 9.

[45] Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 9.

[46] Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 3.

segregation in 2013-2014 were significantly less likely than white inmates to have a history of self-injury (6.5% compared to 13.8%).[47]

Total Black Admissions to Segregation – 10 Years



- Both the number of Black offender admissions to segregation and the number of offenders have increased significantly in the last 10 years.

The OCI reports that despite being rated as a population having a lower risk to re-offend and lower need overall, Black inmates are 1.5 times more likely to be placed in maximum security institutions where programming, employment, training, education-upgrading, rehabilitative programming and social activities are limited.[48]

The OCI's 2012-2013 Annual Report further notes that Black inmates consistently reported difficulties finding employment. The official prison unemployment rate in 2012-13 was 1.5%; however, for Black inmates this rate was 7%.[49]

Furthermore, African Canadian inmates interviewed for a 2013 OCI case study reported experiencing discrimination by correctional officials by being subject to racist language, as well as being ignored and disregarded in ways that, as the OCI observed, increase feelings of marginalization, exclusion and isolation for Black inmates. These inmates also face the dehumanizing experience of being subjected of discriminatory stereotypes such as being a "gang member," "trouble-maker," "drug dealer" or "womanizer." Finally, it is also reported that a 2013 review of data over the previous five years reveals that Black inmates were consistently over-represented in administrative segregation, particularly involuntary and disciplinary placements. In 2012-13, Black inmates were also disproportionately involved in use of force incidents.[50]

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[47] http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20150528-eng.pdf

[48] Government of Canada, The Correctional Investigator Canada, Annual Report of the Office of the Correctional Investigator, 2012-2013 Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) Online: http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx

[49] *Ibid.*

[50] *Ibid.*

Finally, the OCI's 2012-2013 Annual Report also notes that Black offenders did not feel that in-prison programming adequately reflected their cultural reality. Black inmates reported that they were not reflected in program materials and activities and they felt these were not rooted in their cultural or historical experiences. Moreover, many initiatives and services which serve as important complements to CSC programming also fell short of expectations, the report noted.[51] The OCI's review also revealed the following:

- Inconsistent support for cultural events at the institutional level. Some Black Inmate Committees had sufficient guidance in planning events while others reported little to no assistance, to the point that very few events had ever taken place within the institution.

- A lack of community support. Many Black inmates had never seen, spoken with or met anyone from a Black community group while incarcerated, though most expressed a strong desire to develop and maintain these community linkages. (Importantly, this form of support is a key component of CSC's *Strategic Plan for Aboriginal Corrections*.)

- A need for better access to and availability of hygiene products specifically designed for their hair/skin type and cultural food items through the canteen.

- Lower grant rates for temporary absences, day and full parole. Programs that offer gradual, supervised release have been shown to reduce re-offending.

Incarcerated African Canadian Women

The Committee has taken note of the specific concerns facing African Canadian women inmates, and in 2006 expressed concern regarding the situation in Canada of women prisoners belonging to ethnic minorities and women with disabilities.[52] In 2009, the Human Rights Council adopted the Report of the Working Group on the Universal Periodic Review, which recommended that Canada "closely monitor the situation of ...women prisoners."[53] The accelerated rate of federally sentenced African Canadian women reveals important gendered dynamics.[54]

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[51] Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013).
[52] UN HRC, Eighty-fifth Session, 20 April 2006, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, concluding observations of the Human Rights Committee at page 5.
[53] Human Rights Council-Universal Periodic Review-Canada (February 2009), online: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights3February2009am.aspx>.
[54] Office of the Correctional Investigator, A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report, online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx> at para 18

African Canadian women inmates now account for 9.12% of the total federal penitentiary population while African Canadians represent just 2.9% of the general Canadian population.[55] African Canadian women who are disproportionately over-represented in federal correctional institutions in Canada "are more likely to have mental health issues, histories of abuse, and are more likely to self-harm or attempt suicide"[56]. Solitary confinement and segregation of inmates continue to be relied on as a "tool to warehouse prisoners with mental health issues."[57]A further consideration compounding the intersection of race, gender and criminalization is the fact that the needs and experiences of African Canadian women are often addressed as only secondary to those of men.[58] The Office of the Correctional Investigator reports that, "[a]ll Black inmates, particularly Black women, indicated a lack of access to hygiene products specifically designed for their hair/skin type through canteen."[59]

The stark data documenting the continued anti-Black racism in the form of over-incarceration of male and female African Canadians remains at unacceptable levels that have implications world wide as Canada continues to be perceived as a leader of human rights. When the governments of Canada are condoned to disproportionately criminalize African Canadians and mistreat Black incarcerated persons, permission is granted to lower the expected standard of human rights for incarcerated people across the world.

The over-incarceration and the excessively punitive treatment of African Canadians in Canadian prisons amounts to a violation of Articles 7 and 10 of the *ICCPR* because it amounts to cruel, inhuman and degrading treatment of punishment.

The Safe Streets and Communities Act

The imposition of a jail sentence upon conviction is a "punishment" that engages Articles 7 and 10of the *ICCPR*. Both the *ICCPR* and section 12 of the *Canadian Charter of Rights and Freedoms*[60] provide African Canadians with constitutional protections against state-inflicted punishment that is cruel, degrading and unusual.

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[55] Office of the Correctional Investigator, A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report, online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx> at para 18.

[56] Canadian Human Rights Commission, Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women, (Ottawa: Canadian Human Rights Commission, 2003) at 5.1.2.

[57] British Columbia Civil Liberties Association, Press Release, "BCCLA launches lawsuit to challenge woman's lengthy solitary confinement in federal prison" (4 March 2011) online: BBCLA <http://www.bccla.org/pressreleases/11solitary.html>.

[58] Commission of Inquiry into certain events at the Prison for Women in Kingston, (Ottawa: Public Works and Government Services Canada, 1996); Canadian Human Rights Commission, Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women, (Ottawa: Canadian Human Rights Commission, 2003).

[59] Office of the Correctional Investigator, A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report, online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx> at para 28, 29.

[60] Section 12: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

In *General Recommendation No. 34 - Racial discrimination against people of African descent,* the Committee urged states to ensure that measures taken in the fight against crimes do not discriminate in purpose or effect on the grounds of race and colour.[61] Similarly, in *General Recommendation No. 31 - The prevention of racial discrimination in the administration and functioning of the criminal justice system,* the Committee recognized the handing down by courts of harsher or inappropriate sentences against persons belonging to racialized groups as a possible indicator of racial discrimination.[62]

Since 2006, the Canadian government has developed sixty mandatory minimum jail terms for crimes involving guns, drugs and sex offences despite crimes rates that are at a fifty-year low. Nowhere is the impact of denied civil rights more pronounced or more palpable than within the criminal justice system. African Canadians are disproportionately more likely to receive the mandatory minimum sentence, particularly in Toronto.[63] African Canadians also have more charges initially laid against them and are more likely to be detained before trial than white Canadians.[64] The disparity in detention rates of African Canadians and white Canadians is especially concerning in light of a recent Supreme Court of Canada decision, *R. v. St-Cloud*[65], which leading criminal lawyers say will make it much harder for accused persons to get bail in Canada. The decision has this effect because it now allows judges to order pre-trial detention of an accused for a broader range crimes, whereas, in Canada, it has typically been the case that pre-trial detention, or denial of bail, would be reserved for crimes that are especially heinous, such as murder.[66]

Mandatory minimum sentences of three years upon conviction for a first offence of possession of a loaded, restricted firearm were introduced with the 2012 enacting of the omnibus *Bill C-10* titled, the *Safe Streets and Communities Act*.[67] The *Safe Streets and Communities Act* proposes to make communities safer by imposing tougher sentences (*e.g.* mandatory minimums) for the production, possession and trafficking of illicit drugs; eliminating the use of conditional sentences for certain crimes; extending ineligibility periods for applications for a pardon; and increasing the likelihood of custodial and adult sentences for young offenders under the *Youth Criminal Justice Act*.[68]

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[61] *General Recommendation No. 3* at para 38.
[62] *General Recommendation No. 31* at para 1(f).
[63] Code J ruling in *Nur* at 77 and 79.
[64] Scot Wortley & Julian Tanner, "Discrimination or "Good" Policing? The Racial Profiling Debate in Canada" in Our Diverse Cities, ed Caroline Andrew (2004) 1 Metropolis 197 -201 at 197.
[65] *R. v. St-Cloud*, 2015 SCC 27
[66] Yamri Taddese, "Lawyers predict more overcrowding after St-Cloud", *Law Times* 25 May 2015. Online: http://www.lawtimesnews.com/201505254697/headline-news/lawyers-predict-more-overcrowding-after-st-cloud
[67] *Safe Streets and Communities Act*, SC 2012, c 1.
An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.
[68] Youth Criminal Justice Act, SC 2002, c 1.

While many mandatory minimum sentences remain in effect, there are signs that Canadian courts are starting to recognize them as a human rights violation. In November 2013, a unanimous five-judge panel of the Ontario Court of Appeal heard *R v Nur* and struck down s. 95(2) of the *Criminal Code* after finding that it violates section 12 of the *Charter*.[69] This decision was appealed at the Supreme Court of Canada (SCC). The ACLC was granted leave to intervene at the SCC in a hearing that took place in November 2014. On April 14, 2015, the Supreme Court of Canada struck down the s. 95(2) mandatory minimum sentences in the *Criminal Code* for gun possession.[70]

The mandatory minimum sentence raises a number of concerns regarding cruel and degrading punishment in violation of Articles 7 and 10 of the *ICCPR*. Firstly, the Government of Canada has introduced legislation that is disproportionately applied to African Canadians and therefore will elevate already unacceptable levels of incarceration rates and the duration of jail sentences for African Canadians. Secondly, the elimination of conditional sentences for a range of offences denies any individualized assessment. Flexible sentencing tools are used by the judiciary to, for example, allow single mothers to continue working while serving their sentence and preventing the break-up of families, or to ensure that those with underlying mental health needs get the community treatment that best ensures their recovery and rehabilitation. Poverty, racial profiling and over-incarceration remain the major contributors to the increased dislocation of African Canadian families. That the situation has continued to worsen over the years is indicative of Canada's failure to fulfill its obligation to protect the African Canadian family, mother and child.

Mandatory minimum jail terms reflected by amendments to the *Criminal Code,* provision s. 95(2)(a)(i), will result in the imposition of unjust, grossly disproportionate sentences of African Canadians.[71] The *Safe Streets and Communities Act* will serve only to exacerbate the negative impact of criminal law on the African Canadian community. Specifically, the *Safe Streets and Communities Act* will lead to furthering the mass criminalization and incarceration of the African Canadian community, thereby exposing African Canadians to cruel and degrading treatment and punishment, and depriving African Canadians of the right to liberty and security of the person, freedom from arbitrary arrest and detention, segregation in correctional facilities and equal participation in political life, contrary to Articles 7 and 10 of the *ICCPR*.

Due to its inevitable disproportionate impact on the civil and political rights of members of the African Canadian community, the federal government's introduction of the *Safe Streets and Communities Act* contravenes the Committee's recommendations and Articles 7 and 10 of the

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[69] *R v Nur*, 2013 ONCA 677, 117 OR (3d) 401.
[70] *R v Nur*, 2015 15.
[71] Canadian HIV/AIDS Legal Network, "Mandatory Minimum Sentences for Drug Offences: Why Everyone Loses" (April 2006), online: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1455>. Thomas Gabor and Nicole Cruther, *Mandatory Minimum Penalties: Their effects on crime, sentencing disparities, and justice system expenditures,* (Ottawa: Justice Canada, Research and Statistics Division, 2002) at 23; Racism Behind Bars: The Treatment of Black and Other Racial Minority Prisoners in Ontario Prisons, Commission on Systemic Racism in the Ontario Justice System, 1994.

ICCPR. The disjuncture between Canada's international commitments and its domestic law highlights how deeply at odds the Canadian federal government is with globally recognized standards of civil and political rights.

Article 14 – Carding and Non-Conviction Records

The Human Rights Committee, *General Comment No. 32, Article 14, U.N. Doc. CCPR/C/GC/32 (2007)* states that, in accordance with Article 14 of the *ICCPR*, paragraph 2, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence is articulated by the Committee as being fundamental to the protection of human rights, and imposing on the prosecution the burden of proving the charge for the purpose of guaranteeing that no guilt can be presumed until the charge has been proved beyond reasonable doubt. The Human Rights Committee also affirmed that this provision is intended to ensure that an accused has the benefit of doubt, and requires that persons accused of a criminal act be treated in accordance with this principle. The presumption of innocence is right that is not equally enjoyed by African Canadians due to what are called non-conviction records.

Non-conviction records are police records documenting interactions of individuals with police. A non-conviction record could include everything from random questioning to a mental health distress call. They are records of encounters where no criminal charge is laid or where an individual is not convicted of a crime. It was recently revealed in a 2014 *Toronto Star* investigation that these records were, unbeknownst to civilians, being kept in police databases and showing up on individuals' background checks. The effect of such disclosures, the investigation revealed, was to prevent individuals from qualifying for jobs, educational and volunteer opportunities and from crossing the border into the United States.[72]

African Canadians are subjected to heightened scrutiny by police and have their communities and lives disproportionately monitored and surveilled by the police and policing activities. This has led to disproportionate contact of African Canadians with the police, resulting in a disproportionate accumulation of non-conviction records among African Canadians. As such, non-conviction records have served to exacerbate the under-employment and unemployment of African Canadians as many employers in Ontario require job applicants' police background checks, which also include non-conviction records, as grounds to deny or rescind employment and internship opportunities.[73] This has resulted in many African Canadians being forced to face

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[72] Richard Brennan, Robert Benzie, Robert Cribb, "Ontario moves to limit police sharing non-conviction information", *Toronto Star,* Online: http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html; See also: John Howard Society of Ontario, Canadian Civil Liberties Association, *On the Record: An Information Guide for People Impacted by Non-Conviction Police Records in Ontario*, 2014. Online: http://www.johnhoward.on.ca/wp-content/uploads/2014/11/On-the-Record-1-FINAL.pdf

[73] *Richard Brennan, Robert Benzie, Robert Cribb, "Ontario moves to limit police sharing non-conviction information", Toronto Star* (June 3 2015) Online: http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html

the embarrassment, humiliation and stigmatization of being denied opportunities because of non-criminal interactions or crimes for which they were never charged or convicted.

Non-conviction records continue to deny individuals the right to be presumed innocent until proven guilty. They are generated where an individual has contact with the police, but no charge is laid, charges are stayed or a person is acquitted for a crime. However, this information is still being inserted into police records for background checks and being released by police to employers, as well as academic institutions, volunteer organizations and even shared with Canadian and US border services agencies.[74]

Because the African Canadian community is over-policed, these records have a disparate and more damaging impact on this community than on the average civilian. In June 2015, the Ontario government proposed legislation limiting the release of non-conviction records in police background checks.[75] However, it will be months before such legislation is passed. This legislation also does not account for the hundreds and thousands of African Canadians who have already been negatively impacted by disclosures of non-conviction records to potential employers, academic institutions and civic organizations. It is important to note that Ontario's Human Rights Code protects individuals from discrimination on the bases of having been convicted of a crime for which they have obtained a pardon[76], but individuals who have not even been charged or convicted of a crime for which they have been accused enjoy no such protection from discrimination. Resultantly, the laws of Ontario allow African Canadians to have their rights to be presumed innocent until proven guilty routinely violated by employers, academic institutions, volunteer-based community/civic organizations and border officials. While the use and disclosure of non-conviction records have been allowed to impact African Canadians in a manner that violates Article 14's guarantee of the right to be presumed innocent, disclosure of non-conviction records also engages Article 17 of the *ICCPR*. This is due to the fact that such records subject a disproportionate number of African Canadians to arbitrary interference with their privacy.

Article 26 – African Canadian Inequality before the Law and Absence of Equal and Effective Protection Against Discrimination

According to the UN Human Rights Committee, *General Comment 18, Non-discrimination (1994)*, Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Racial profiling by law enforcement agencies is one of the most pervasive and pernicious

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[74] *Ibid.*
[75] *Supra* Note 73
[76] See sections 5 and 10 of Ontario's *Human Rights Code R.S.O. 1990, c. H.19*

practices that infringe on the ability of African Canadians to have equal enjoyment of their civil and political rights under the *ICCPR*. The African Canadian Legal Clinic's definition of racial profiling has been accepted in Canadian law, and is as follows:

> Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.[77]

Despite Canada being a liberal democratic society, it is well established that "racial stereotyping and discrimination exists in society, it also exists in institutions such as law enforcement agencies."[78] Racial profiling violates Article 26 of the *ICCPR* by violating the fundamental principle of equal protection under the law. Racial profiling also offends numerous sections of the *Charter*, a constitutional guarantee of Canadian rights against abusive governmental actions and some inaction. Racial profiling in law enforcement prescribes criminal actions onto African Canadians[79] and contributes to the over-representation of African Canadian youth in prison. Racial profiling thus divests African Canadians of a sense of citizenship and belonging within their country and respective communities.

In 2012, the Committee on the Elimination of Racial Discrimination noted concern about the treatment of African Canadians, particularly in Toronto, who were subject to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population. In light of *General Recommendation no 34 (2011)* on racial discrimination against people of African Descent, and in light of its *General Recommendation no. 31 (2005)* on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the

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[77] *R. v. Richards* (1999), 1999 CanLII 1602 (ON CA), 26 C.R. (5th) 286, 42 M.V.R. (3d) 70 (Ont. C.A.), as at p. 295 C.R.

[78] African Canadian Legal Clinic, *"African Canadian Legal Clinic, Anti-Black Racism in Canada: A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination"* (Toronto: African Canadian Legal Clinic, 2012) at 55-65; *R v Brown*, [2008] 64 OR (3d) 161 at 165 at 165; Jimmy Bourque et al., "The Effectiveness of Profiling from a National Security Perspective" Canadian Human Rights Commission and Canadian Race Relations Foundation (March 2009) at 21; Ontario, Race Relations and Policing Task Force, *The Report of Race Relations and Policing Task Force* (Ontario, April 1989) at 14 (Chair: Claire Lewis); David Tanovich, "One List for Air Travelers, One List For Black Youth" *Toronto Star* (Thursday July 5, 2007) at AA8; CTV.ca News Staff, "1 in 6 Canadians victims of Racial Profiling: Poll" (March 21, 2005) (online: <http://www.ctv.ca/servlet/an/story/CTVNews/20050321/racism_ipsos_050321>); and Powell, Terry, "One in Six Canadians Victims of Racism" (March21, 2005) Canadian Press (online: <http://www.caircan.ca/mw_more.php?id=P1488_0_7_0_C>); Carl R James, "'Up to No Good': Black on the Streets and Encountering Police" in V Satzewich, ed, *Racism and Social Inequality in Canada: Concepts, Controversies & Strategies of Resistance* (Toronto: Thompson Educational Publishing, 1998) 157; Canada, Royal Canadian Mounted Police, "Inequality Before The Law: The Canadian Experience of 'Racial Profiling'" (Ottawa: Community, Contract and Aboriginal Policing Services Directorate, February 2007) (Written by: Ron Melchers).

[79] Kazarian, Crichlow & Bradford, *Diversity Issues in Law Enforcement, supra* note 21 at 202.

Committee on the Elimination of Racial Discrimination reminded the Government of Canada about the obligations to:

> Investigate and punish the practice of racial profiling; (c) Train prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention; (d) Provide the Committee with statistical data on the treatment of African Canadians in the criminal justice system; (e) Conduct a study on the root causes of the over-representation of Africans Canadians in the system of criminal justice.[80]

Commentary regarding Article 26 of the *ICCPR* indicates that this provision is to be interpreted as requiring not only protection against discrimination, but also positive action to promote equality.[81] The record of the Canadian government is abysmal when it comes to promoting equality for African Canadians.

A 2002 series on race, policing and crime in Toronto documented the racial profiling and harsher treatment of African Canadians with respect to arrests, stops, searches and release.[82] A 2010 and another 2012 series on racial profiling by the *Toronto Star* newspaper revealed that despite a slate of changes including a new police chief and more racial diversity in the police force's higher ranks, racial bias *is* a factor in police decisions as evidenced by the following:

- Although African Canadians make up 8.4 per cent of Toronto's population, they account for three times as many contacts with police;
- African Canadian males aged 15-24 are stopped and documented 2.5 times more than white males the same age[83]; and
- Differences between the rates of carding between African Canadian and white groups are highest in more affluent, mostly white areas of Toronto, indicating the presence of the "out-of-place" phenomenon.[84]

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[80] Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67ll8 (2012) at 3.

[81] B.G. Ramcharan, "Equality and Non-discrimination" in Louis Henkin, ed, The International Bill of Rights: The Covenant on Civil and Political Rights (New York: Columbia University Press, 1981) 246 at 255.

[82] Jim Rankin, "Singled Out," *The Toronto Star* (19 October 2002); Jim Rankin, "The Story Behind The Numbers", *The Toronto Star* (19 October 2002); and Jim Rankin, "Police Target Black Drivers, Star Analysis of Traffic Data Suggests Racial Profiling" *The Toronto Star* (20 October 2002); *Toronto Star,* "Star's Race Profiling Series Valid, Board Told York U. Professor Explains Analysis", December 11, 2002; Michael Friendly, *Analysis of Toronto Police Data Base,* (York University, 2003).

[83] Jim Rankin, "Race Matters: Blacks documented by police at high rate," *The Toronto Star* (6 February 2010), online: http://www.thestar.com/specialsections/raceandcrime/article/761343--race-matters-blacks-documented-by-police-at-high-rate.

[84] Jim Rankin, "Race Matters: Blacks documented by police at high rate," *The Toronto Star* (6 February 2010), online: http://www.thestar.com/specialsections/raceandcrime/article/761343--race-matters-blacks-documented-by-police-at-high-rate; Royson James, "Change trickles slowly to the streets," *The Toronto Star* (6 February 2010), online: http://www.thestar.com/news/article/761503--james-change-trickles-slowly-to-the- streets; Jim Rankin, "Police ponder how to best to collect race data," *The Toronto Star* (15 February 2010), online: http://www.thestar.com/specialsections/raceandcrime/article/765605--police-ponder-how-best-to-collect-race- data; Jim Rankin, "Story behind the numbers" *The Toronto Star* (6 February 2010), online: http://www.thestar.com/specialsections/raceandcrime/article/761069--story-behind-the-numbers;

- According to a 2012 analysis undertaken by the *Toronto Star*, African Canadians were the target of almost 25% of all contact cards filled out between 2003 and 2008. This report also found that between 2008 and mid-2011, the number of young African Canadian males carded in Toronto was 3.4 times higher than the city's actual population of African Canadian young men.[85]
- In July 2014, the *Toronto Star* reported that since July 2013, carding in Toronto dropped by 75%. After the July 2013 drop in carding numbers, the proportion of contact cards for African Canadians rose to 27.4 per cent.[86]

The aforementioned reports from the *Toronto Star* expose the anti-Black racist outcomes of the practice of what is called "carding". Carding is a process whereby Toronto police officers arbitrarily stop and question innocent people (predominantly African Canadians) who are not under investigation, arrest or detention and record in the police database the personal details of the individual and, who they are with. This personal information is stored indefinitely in a police database to which neither the individuals carded nor the general public have open access. A 2014 independent study into the practice of carding was commissioned by the Toronto Police Services Board and found that even children (young people younger than 18) were being subjected to carding.[87]

This insidious practice of police carding is officially sanctioned and avidly supported by the Toronto Police Service and its Chief of Police, despite the fact that this practice has proven to disproportionately target African Canadians. Ultimately, carding, as a form of racial profiling, amounts to direct and systemic violation of African Canadians' right under Article 26 of the *ICCPR* to be regarded as equal before the law and entitled without discrimination to the equal protection of the law, namely African Canadians' right to be free from arbitrary detention.

Policing that violates the civil and political rights of African Canadians is not restricted to Toronto.[88] The Chief of Police Services in the Ontario city of Kingston admitted that racial

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and *Toronto Star*, "The Chief on race, crime, and policing" (6 February 2010), online: http://www.thestar.com/specialsections/raceandcrime/article/761112--the-chief-on-race-crime-and-policing>.

[85] *Toronto Star* – "Known to Police" See online: http://www.thestar.com/news/gta/2012/03/09/known_to_police_how_the_star_analyzed_toronto_police_stop_and_arrest_data.html

[86] Jim Rankin, Patty Winsa, "Carding drops but proportion of blacks stopped by Toronto police rises", *Toronto Star* (July 26 2014). Online: http://www.thestar.com/news/insight/2014/07/26/carding_drops_but_proportion_of_blacks_stopped_by_toronto_police_rises.html

[87] Patty Winsa, "Toronto Police 'carding' policy to be assessed by third party", *Toroon Star* (December 14, 2014) Online: http://www.thestar.com/news/gta/2014/12/14/toronto_police_carding_policy_to_be_assessed_by_thirdparty.html; Neil Price, *"This Issue Has Been With Us For Ages": A Community-Based Assessment of Police Contact Carding in 31 Division: Final Report"* (Logical Outcomes: November 2014) at 64. Online: http://capptoronto.ca/wp-content/uploads/2014/07/CAPP-Final-Report-WEB201114.pdf

[88] Kelly Bennett, "Hamilton police street checks linked to carding by Toronto report", CBC News (June 5 2015). Online: http://www.cbc.ca/news/canada/hamilton/news/hamilton-police-street-checks-linked-to-carding-by-toronto-report-1.3100594

profiling was a common police tactic.[89] A 2006 study of police statistics on Kingston found that African Canadian males were 3.7 times more like to be stopped by police than white males.[90] More recently, in 2012 the Ottawa Police Service agreed to a settlement in a racial profiling case after a young Black man was racially profiled and physically assaulted by an Ottawa police officer who pulled him and his friends over while driving his mother's Mercedes Benz.[91]

Furthermore, in Montreal racial profiling has been documented as an extensive systemic practice of the police. A 2011 study on racial profiling released by Quebec's human rights commission, states the following:

> In today's Québec, the "racialized" groups that are most likely to be victims of racial profiling are Blacks, persons of Latin American, South Asian or Arab origins, and Muslims as well as Aboriginals persons.
>
> Based on the definition of racial profiling adopted by the Commission, it seems clear that the significant over-representation of Blacks among those stopped and questioned in Montréal in recent years confirms the perception that racial profiling is being applied to them.
>
> Blacks are more often arrested and prosecuted throughout the territory of the Island of Montréal.
>
> Blacks [all age groups combined] were 2.5 times more likely to be arrested on the Island of Montréal than whites, they were 4.2 times more likely to be stopped and questioned. These rates are at their highest levels (7 to 11 times more likely to be stopped) in neighbourhoods where there are fewer Black residents.[92]

Racial profiling, along with other forms of police harassment and abuse are also a frequent experience for African Canadians in Nova Scotia, where there are resilient and heritage-rich African descendant communities with roots that go back to the earliest settlements of what is now Canada.[93]

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[89] William Closs & Paul F McKenna, "Profiling a problem in Canadian police leadership: The Kingston Police data collection" (June 2006) 49: 2 Can Pub Admin 143; G. McArthur & J. Pritchett, "It's official: racial profiling banned" *The Kingston Whig-Standard* (16 May 2003).

[90] William Closs & Paul F McKenna, "Profiling a problem in Canadian police leadership: The Kingston Police data collection" (June 2006) 49: 2 Can Pub Admin 143; G. McArthur & J. Pritchett, "It's official: racial profiling banned" *The Kingston Whig-Standard* (16 May 2003).

[91] CBC News, "Ottawa police racial-profiling settlement questioned" (May 4 2012) Online: www.cbc.ca/news/canada/ottawa/ottawa-police-racial-profiling-settlement-questioned-1.1199823

[92] Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011) at 10, 28-29.

[93] Michelle Y. Williams, "A Nova Scotian Restorative Justice: A Change Has Gotta Come" (2013) 36:2 Dal LI 420 at 448.

While progress on racial profiling is to be commended as an important first-step, the inconsistency in standardization of police service models that address systemic racism in policing presents cause for concern.[94] Communities that are subjected to racial profiling are unfairly over-policed, unjustly scrutinized and disproportionately represented in the criminal justice system. However, it is not only the police in urban centres that are responsible for this.

In October 2013, police officers from the Ontario Provincial Police collected DNA samples from migrant workers in Tillsonburg, Ontario after a woman was sexually assaulted by an unknown person. As many as 100 men who had come to Canada as Seasonal Agricultural Workers from the Caribbean and Mexico were asked to provide a DNA sample though many of the men were not within reasonable parameters of the suspect's description. None of these men were ever charged or convicted of the alleged offence and yet their DNA samples remain warehoused in a police database. Since March 3, 2014, the Office of the Independent Police Review Director has been undertaking a review of Ontario Provincial Police practices for obtaining DNA samples from specific groups during criminal investigations.[95]

Racial profiling contributes to the over-representation of African Canadians in all levels of Canada's criminal justice system. By failing to adequately address and eradicate the pervasive problem of racial profiling, Canada is in violation of its non-discrimination obligations under the *ICCPR* (Articles 2 and 26) and the *Convention on the Elimination of All Forms of Racial Discrimination*.

The ACLC encourages the Committee to review the Government of Canada's compliance with the *ICCPR* in light of the above, especially in considering Canada's obligations of non-discrimination under Articles 26 and by extension, Article 2 of the *ICCPR*.

Canada's Police Accountability Deficit: The SIU and the OIPRD

All of the above is not meant to suggest that Canada is without institutions to which African Canadians can turn for obtaining justice when they experience anti-Black racial discrimination at the hands of a state agent or office of the criminal justice system. Such institutions do exist. However, they have proven wholly ineffective, unwilling or unable to hold police accountable. Primary among the institutions that are ineffective at serving their mandate to protect civilians from police discrimination, harassment and violence, including African Canadians, are the province of Ontario's Special Investigations Unit and Office of the Independent Police Review Director.

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[94] W Shaffir, V Satzewich & H Taraky, "Policing Newcomers in Canada: Policy, Training and Practice" in P Van Aerschot & P. Daenzer, eds, *Integration and the Protection of Immigrants from Nordic Perspective* [Forthcoming in London; Ashgate] online: < p2pcanada.ca/wp-content/uploads/2011/11/Policing-final-report.doc> at 20.

[95] Office of the Independent Police Review Director, "OIPRD TO REVIEW OPP PRACTICES FOR OBTAINING VOLUNTARY DNA SAMPLES IN POLICE INVESTIGATIONS" (3 March 2014) online: OIPRD < https://www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/NewsRelease--OPP-DNA-Systemic-Review_E.pdf>.

The following discussion and examination of these institutions relies on and draws from a February 2015 report by the Policing Literacy Initiative (PLI), which is a Toronto-based grassroots public education and advocacy group focused on policing and public safety in Ontario. The report is entitled "What We Can Learn from Policing and Public Safety in Toronto".[96]

The Special Investigations Unit

As reported by the PLI, the SIU was established in 1990 in response to community and political pressure for increased police accountability and laying of criminal charges against police officers after a series of deadly use of force incidents against members of Toronto's African Canadian community. Ontario's Special Investigations Unit ("SIU" or "the Unit") is a civilian law enforcement agency that investigates incidents involving the police that result in death, serious injury or allegations of sexual assault. As a provincial agency of the Government of Ontario's Ministry of the Attorney General, the SIU, at least in legislation, operates independently of any police service.[97]

The PLI report also points out that the legitimacy, effectiveness and relevance of the SIU is severely compromised by the fact that it has a low charge-rate, tends to primarily employ former police officers as investigators, and does not communicate in an open, accessible and transparent way with the public about its activities and operations.[98]

The SIU does not track the results of charges laid based on its investigative work, but the *Toronto Star* newspaper analyzed 3,400 SIU investigations from 1990 to 2010 and found that in the Unit's first twenty years, only 16 officers had been convicted of a crime, while only 3 officers have spent time in prison as inmates. Most appallingly, in its 25 years of existence, the SIU's interventions have not led to a single instance of a police officer being prosecuted for deadly use of force against an African Canadian.[99] This is despite the fact that African Canadians are significantly over-represented in police use of force incidents.[100]

The Office of the Independent Police Review Director (OIPRD)

The Office of the Independent Police Review Director is another institution that, despite its progressive mandate, has failed to effectively protect African Canadians from police abuse and brutality. The information below is reproduced from the PLI report as it most accurately

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[96] Jamil Jivani, ed. (February 2015) Online : https://urbanalliance.files.wordpress.com/2015/02/pli-what-we-can-learn-from-policing-and-public-safety-in-toronto-feb-2015.pdf

[97] *Ibid.* at 7 -10

[98] *Ibid.*

[99] *Supra* Note 97

[100] Ajamu Nangwaya, "Fact Sheet on Police Violence in the Jane-Finch Community of Toronto" Global Research, March 19 2015. Online: http://www.globalresearch.ca/fact-sheet-on-police-violence-in-the-jane-finch-community-of-toronto/5437581; See also: Ajamu Nangwaya "Fact Sheet on Police Violence Against the African Community in Canada" http://toronto.mediacoop.ca/blog/ajamu-nangwaya/18378

captures the origins, nature and limitations of the OIPRD.[101]

The Office of the Independent Police Review Director ("OIPRD ") is legislatively mandated to receive complaints from civilians about the police services in Ontario. Established in 2009, the OIPRD conducts investigations and holds professional standards hearings in relation to officers' employment when a civilian complains of police conduct. The codes of conduct of the police services that the OIPRD regulates are the rules that it enforces. Investigations are often conducted by police officers working under the supervision of the OIPRD.[102]

Since 2009, the OIPRD has received over 17,000 complaints, with just over 3100 received in 2014. Upon receipt of a complaint, the OIPRD firsts screens it to determine whether it warrants an investigation. If it does, they either refer the complaint to the police service against which it was filed for investigation, refer the complaint to a different police service for investigation, or retain the complaint and investigate it themselves. Complaints about police policies or services must be referred to a Police Chief or to the Ontario Provincial Police ("OPP") Commissioner. Investigations that are referred to police services are supervised by an OIPRD case coordinator. Complainants are to be kept informed throughout the process concerning the progress of their complaint.[103]

In addition to investigating complaints, the OIPRD can undertake systemic reviews of police services. While the Office has undertaken a systemic review of the Ontario Provincial Police's practices for obtaining voluntary DNA samples from Ontario-based racialized migrant workers from the Caribbean and Mexico, it has not undertaken a review of the Toronto police practice of carding, which is discussed above.

As noted in the PLI report, one of the significant limitations of the OIPRD is its reliance on police professional standards officers within police services to investigate some citizen complaints. The OIPRD oversees these investigations after they are "referred" to professional standards officers. The director has discretion to take over an investigation, in which case OIPRD staff assume the role of investigators.[104]

The OIPRD is only able to recommend professional standards hearings. The hearings are entirely staffed by lawyers and adjudicators that have been selected by police.[105] The result is that it is "nearly impossible", states the PLI report, to give an officer a harsher than minimal penalty even when there is strong evidence to support such action. The OIPRD does not conduct criminal investigations. Although the OIPRD provides materials through community outreach and learning seminars and it has a small social media presence and creates commercial advertising. However, as noted in the PLI report, most Ontarians are still totally unaware of the existence of the OIPRD. This has the effect of promoting a "lack of public awareness about a possible remedy for pervasive police misconduct" the report continues, and

[101] *Supra* Note 96 at 14-18.
[102] *Ibid.*
[103] *Supra* Note 96 at 15.
[104] *Ibid.* at 16.
[105] *Supra* Note 96 at 17.

also "means that many individuals who have legitimate complaints to make will never know that they have any recourse."[106]

Another considerable limitation of the OIPRD that was highlighted by the PLI is that it automatically screens out any complaint that is older than six months. This limitation period is unreasonably short.[107] Because of the significant power imbalance between police and civilians, a negative interaction with a police officer can be so traumatic as to leave a civilian needing more than 6 months to find the calm, courage, information and support to file a police complaint. Given the disproportionate contact of police with African Canadians, and the statistical over-representation of African Canadians in use of force incidents, this limitation period has a discriminatory impact on Ontario's African descendant population.

The abovementioned limitations of both the SIU and OIPRD deny African Canadians their right to be recognized as equal before the law and to enjoy equal protection of the law without discrimination, pursuant to Articles 26 and 2 of the *ICCPR*. The above-noted shortcomings of both institutions call into question the independence, effectiveness and accountability of these police over-sight bodies and policing in general. This significantly diminishes public confidence in the police, and the police complaints process, especially when considering that these oversight institutions essentially allow police to either investigate other supervise the investigations of other police officers.

Anti-Black Hate Crimes

Police-reported hate crimes refer to criminal incidents that, upon investigation by police, are determined to have been motivated by hate towards an identifiable group. The most recent statistics reveal an alarming trend of victimization based on race, especially for African Canadians.[108]

According to Statistics Canada[109], in 2013, there were 585 police-reported hate crimes motivated by race or ethnicity. Black populations continue to be the most highly targeted group among these incidents, accounting for 44% of racial hate crimes (or 22% of all hate crimes).

In 2013, there were 255 police-reported hate crime incidents that targeted Black populations. This represented an estimated rate of 27.0 incidents per 100,000 persons in Canada reporting that they were Black.[110]

Over the period from 2010 to 2013, about two-thirds (66%) of hate crimes targeting Black populations were non-violent, mostly involving mischief (56%). Violent offences made

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[106] *Ibid.*
[107] *Supra* Note 96 at 17-18.
[108] Government of Canada, Mary Allen, *Police-reported hate crime in Canada, 2013* (Canadian Centre for Justice Statistics) at 15. Online: http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14191-eng.pdf
[109] *Ibid.*
[110] *Supra* Note 108

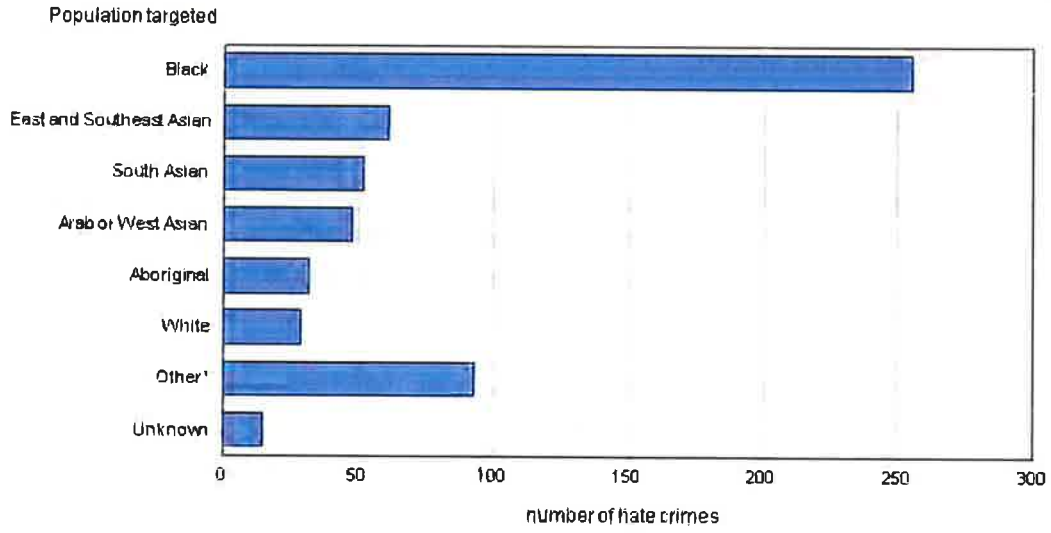
up 34% of hate crimes targeting Black populations. More specifically, assault accounted for 19% of hate crimes against Black populations.[111]

Victims of violent hate crimes targeting Black populations from 2010 to 2013 were predominantly male (73%). As with hate crimes in general, victims were often young; 39% were under age 25.[112]

The majority (55%) of individuals accused of hate crimes targeting Black populations from 2010 to 2013 were under age 25, including 34% under age 18. Of these accused youth (aged 12 to 17), 42% were accused of mischief.[113]

In 2013, there were 585 police-reported hate crimes motivated by race or ethnicity. Black populations continued to be the most highly targeted group among these incidents, accounting for 44% of racial hate crimes (or 22% of all hate crimes).[17] Hate crimes targeting East and Southeast Asian populations[18] comprised 10% of race/ethnicity hate crimes, followed by those targeting South Asian[19] (9%), Arab and West Asian[20] (8%) and Aboriginal (5%) populations (Chart 7, Table 7). It should be noted that the overlap between race/ethnicity and religion for some populations may have an impact on hate crime statistics, as some religious populations (communities) may also be targeted in hate crimes motivated by race or ethnicity.

Chart 7
Number of police-reported hate crimes motivated by race or ethnicity, Canada, 2013



1. Includes motivations based upon race or ethnicity not otherwise stated (e.g. Latin American, South American) as well as hate crimes which target more than one race or ethnic group.
Note: Information in this chart reflects data reported by police services covering 99% of the population of Canada.
Sources: Statistics Canada, Canadian Centre for Justice Statistics, Incident-based Uniform Crime Reporting Survey.

Between 2012 and 2013 there was a 17% decline in police-reported hate crimes motivated by race or ethnicity, with 119 fewer incidents reported. The decline was greatest for hate crimes targeting Arab and West Asian (-16 incidents) and Black populations (-40 incidents). As with hate crime generally, the declines were primarily in non-violent incidents. There was an increase in reported hate crimes targeting East and Southeast Asian populations (+11 incidents) as well as White populations (+9 incidents). In these cases, the increase was primarily in the number of violent incidents.

Similarly, Statistics Canada has also reported in 2012, there were 295 police-reported hate crime incidents that targeted African Canadian populations. This represented an estimated rate

[111] *Ibid.*
[112] *Supra* Note 108
[113] *Ibid.*

of 31.2 incidents per 100,000 persons in Canada reporting that they were Black. In 2012, almost three-quarters of hate crimes targeting African Canadian populations in 2012 were non-violent (71%); these mostly involved mischief (59% of Black hate crimes). Violent offences made up 29% of hate crimes targeting African Canadian populations. [114]

Alarmingly, these statistics reveal that, while representing only 2.9% of the Canadian population, African Canadians continued to be the most commonly targeted victims of race-based hate crimes.[115]

As the ACLC noted in its 2012 Report on the Canadian Government's Compliance with the *International Convention on the Elimination of All Forms of Racial Discrimination*, there are several reasons why hate crimes should be singled out for special attention by the criminal justice system beyond the current provisions of Canada's *Criminal Code*. [116]

First, while the presence of aggravating factors presumably leads to harsher sentences, there is no way to ascertain whether this in fact occurs. Because the *Code* makes no distinction between an assault and an assault motivated by racism (the sentence may differ, but the conviction is the same), it is practically impossible to track and measure the efficacy of hate crime prosecutions and convictions. The absence of a federal offence for race based assaults thus creates a problem with transparency and accountability. Similar concerns have been voiced by police forces.[117]

Second, Canadians who are not members of one of the usually targeted communities have difficulty comprehending the seriousness of hate crimes. Since racial minorities are underrepresented among criminal justice professionals, the seriousness of hate crimes is also not fully appreciated in the criminal justice system.[118] As such, in practice, victims and community groups have to exert pressure on prosecutors to have offences recognized as a hate crime motivated by anti-Black racism.[119] Leaving hate-motivated crimes to be dealt with by the sentencing provisions of the Code thus presume a racial equality before the law that does not exist for African Canadians. Rather, because the prosecutor must request that the judge consider the racist nature of the crime, a lack of understanding of anti-Black racism by prosecutors and/or the members of the judiciary often prevents hate and bias towards African Canadians from being considered.[120]

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[114] Government of Canada, Mary Allen, *Police-reported hate crime in Canada, 2012* (Canadian Centre for Justice Statistics) Online: http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14028-eng.htm
[115] *Ibid.*
[116] African Canadian Legal Clinic, *Errors and Omissions: Anti-Black Racism in Canada – A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* (January 24, 2012) at 34-36. Online: http://www2.ohchr.org/english/bodies/cerd/docs/ngos/AfricanCanadianLegalClinic_CANADA_CERD80.pdf
[117] *Ibid.* at 34.
[118] *Supra* Note 116 at 35.
[119] *Ibid.*
[120] *Supra* Note 116 at 35

Third, relatively few hate crime cases are completed in Canadian courts. As an example, in 2009, Canadian police services reported 1,473 hate crimes. Nonetheless, adult courts completed only 14 cases involving at least one hate crime charge, while youth courts completed only five. Of the 14 cases in adult court, hate crime charges accounted for the most serious charge in just two cases, both of which resulted in the accused person being found guilty and subsequently sentenced to probation. Similarly, in all five cases in youth court, the hate crime charges were not determined to be the most serious offence. As noted earlier, there is currently no data available on the use of sentencing provisions related to hate crime. The low number of completed hate crimes cases points to a lack of strong public condemnation of hate crimes and sends a message to victims that they do not merit proper protection. As a result, victims of hate appear to be reluctant to report incidents to police. Self-reported victimization data from Canadians suggests that only about one-third (34%) of incidents perceived by respondents to have been motivated by hate are subsequently reported to police. According to police sources, the reporting rate is even lower for African Canadians due to the African Canadian community's mistrust of the police and the criminal justice system.[121]

Finally, hate crimes have effects upon the victim beyond those commonly associated with non-bias crimes. Information on self -reported victimization, collected by the General Social Survey ("GSS"), for example, suggests that the emotional consequences for victims of crimes motivated by hate are greater than for victims of crimes not motivated by hate. For example, for four in 10 crimes perceived to have been motivated by hate, victims stated that they found it difficult or impossible to carry out their everyday activities; this was double the proportion of crimes that had not been motivated by hate.[122]

Also, unlike other crimes, the effects of hate crimes reach far beyond the immediate victim, impacting whole communities. "Hate crimes convey a message of fear to all members of the community to which the specific individual belongs." If a crime is motivated by racism, and this is not taken into account by the criminal justice system, the system will have failed to reflect the true extent of the harm caused by the crime. "To the extent that victims are aware of this, they may well become disenchanted with the criminal justice response, and this may reduce still further the probability that such incidents will be reported to the police."[123]

The only way to protect African Canadians, to publicly denounce anti-Black hate crimes, and to ensure consistent sentences for race-based hate crimes across the country is to enact a criminal offence of race-based assault. Such a provision has been enacted in other jurisdictions and is a clear affirmation by states that race-based violence requires specific recognition and attention.[124]

This was already communicated to the Human Rights Committee in the ACLC's January 2012 Report on the Canadian Government's Compliance with the *International Convention on the*

[121] *Supra* Note116 at 35
[122] *Supra* Note 116 at 35-36.
[123] *Supra* Note 116 at 36
[124] *Ibid.*

Elimination of All Forms of Racial Discrimination.[125] On the present occasion of the Human Rights Committee's assessment of the Canadian Government's Compliance with the *International Covenant on Civil and Political Rights*, the ACLC encourages the Committee to direct the Canadian Government to take a firm and definitive stance against anti-Black hate crimes by immediately taking steps to develop and implement a comprehensive action plan against anti-Black racism and hate crimes. Without such action, Canada stands in violation of Article 26 (and by extension Article 2) of the *ICCPR* for failing to provide African Canadians with equal protection of the law as well as equal and effective protection against discrimination.

Article 24 -- Over-representation of African Canadian Children in the Child Welfare System and Rates of School Discipline

Canada is bound by the internationally recognized set of rights for children as expressed in Article 24 of the *ICCPR* and Article 9(1) of the *Convention on the Rights of the Child*[126]. In Canada, child protection legislation is under provincial jurisdiction requiring that any federal effort to understand children's rights engages provincial initiatives. In Ontario, children's aid societies also provide specific services to Jewish, Catholic and aboriginal families. African Canadians do not yet have a child welfare agency established that is directed, developed or operated by the African Canadian community.

There is a gross over-representation of African Canadian youth and children in child welfare systems in Ontario. It is reported that 65% of the children and youth in the care of a Children's Aid Society in the Greater Toronto Area are African Canadian.[127] Yet, African Canadians make up only 6.9% of Toronto's population and just 8% of the city's population is under the age of 18.[128] Contrastingly, 37% of children in care in Toronto are white, while more than 50% of the city's population under 18 years old is white.[129] The relative youth of African Canadians across Canada demands attention to the disproportionate amount of Black children in child welfare systems. In 2001, children under the age of 15 made up 32% of all those with African ethnic origins, whereas children represented just 19% of the overall population.[130]

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[125] *Supra* Note 116.

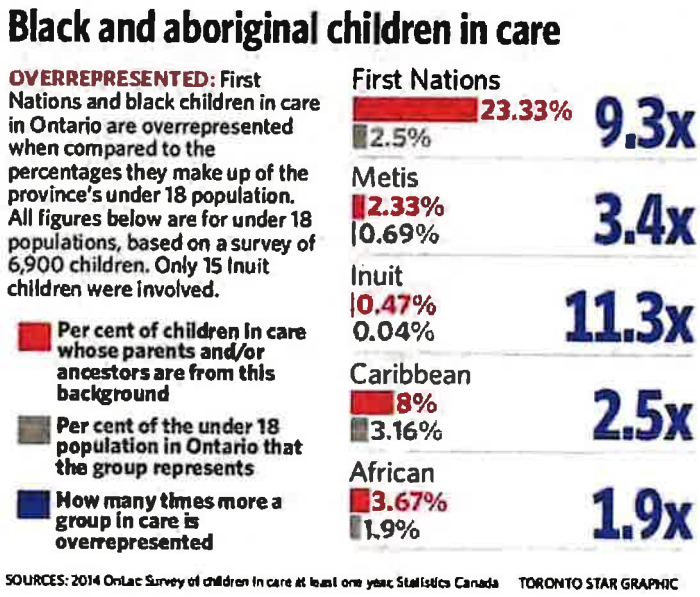
[126] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

[127] Child Welfare Anti-Oppression Roundtable, an initiative which includes representation of almost half of the 52 child welfare agencies in Ontario; Gordon Pon et al, "Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare" (2011) 3 & 4 Intl J of Child, Youth and Fam Stud 385 at 386.

[128] Statistics Canada, Canada's Ethnocultural Mosaic, 2006 Census: Canada's major census metropolitan areas, Toronto: Largest number of visible minorities in the country (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p21-eng.cfm>.

[129] Sandro Contenta, Laurie Monsebraaten & Jim Rankin, "Why are so many black children in foster and group homes?," *Toronto Star* (11 December 2014), online: *Toronto Star* <http://www.thestar.com/news/canada/2014/12/11/why_are_so_many_black_children_in_foster_and_group_homes.html>.

[130] Statistics Canada, "The African Community in Canada" (Ottawa: Statistics Canada, 2007) online: Statistics Canada <http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007010-eng.htm>.



A leaked memo from a Children's Aid Society manager in Ontario requested that staff not close any ongoing cases during March 2013 as a strategy to guarantee funding since welfare agencies in Ontario are transfer payment agencies that receive government funding (no matter the formula) based on the number of children in its care.[131] Motives for the apprehension and placement of children in care by the state are not in all cases noble or objective.

In other words, as reported in the ACLC's 2012 Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada[132] the alarming rate of apprehension of African Canadian children and youth can be partially attributed to funding formulas that prioritize child removal over prevention, family preservation and support. Reminiscent of the devastating federal funding of Aboriginal Residential Schools that paid churches on a per capita basis to house Aboriginal children removed from their families and communities, today's funding structures continue to reward the apprehension of children. In A New Approach to Funding Child Welfare in Ontario, a report published in 2011 by the Commission to Promote Sustainable Child Welfare, for example, the Commission identified that this funding formula creates a " perverse incentive " for children's aid societies ("CASs") to maximize volumes of higher cost services (e.g. foster care) in order to ensure positioning for next year's funding.[133]

> Funding is tied to specific cost factors which in turn are tied to specific activities. Since the highest cost activities relate to supporting children in foster and group

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[131] Katie Daubs, "In leaked memo, Peel CAS staff asked to keep cases open to retain funding," *Toronto Star* (14 March 2013) online: *Toronto Star* GTA: <http://www.thestar.com/news/gta/2013/03/14/in_leaked_memo_peel_cas_staff_asked_to_keep_cases_open_to_retain_funding.html>.
[132] Moya Teklu, *Canada's Forgotten Children*, African Canadian Legal Clinic, July 2012 at 10-12.
[133] *Ibid* at 10

> care, the current approach inadvertently rewards CASs that maintain "in care" volumes resulting in an inherent disincentive to find alternative lower cost avenues to support children and families.[134]

The current funding formula thus creates an incentive among provincial children's aid societies to contravene Article 24 of the *ICCPR* and remove children from their homes even when it is not in their best interests to do so. Given the socio-economic vulnerability of the African Canadian population, and the over-monitoring that African Canadians are often subjected to due to pervasive stereotypes about their inherent aggression, criminality and lack of intelligence, it is not surprising that the cost of this "perverse incentive" is largely borne by African Canadian children and their families.[135]

Further concern stems from the lack of aggregate data about the experience of visible minority children in child welfare systems, and the resulting knowledge gap with respect to African Canadian children. Most children's aid societies do not collect data on race despite a 2012 provincial report[136] and the 2005 Standing Senate Committee on Human Rights[137] recommending that ethnic background information be captured. The gap in information presents barriers to addressing the overlap between the over-representation of African Canadians in the youth criminal justice system and child welfare system.[138] Canadian standards and principles for the protection of children's rights can only become a reality when they are respected by all levels of government.

Not only are African Canadian children removed from their families in circumstances where such action is likely unwarranted, reports to the ACLC suggest that they are not being placed in culturally appropriate familial settings. The province of Ontario has in place practices that are meant to increase the utilization of extended family and kin networks. According to the Ontario Association of Children's Aid Societies ("OACAS"), these options reduce the stress for children coming into care, maintain family and community ties, and increase the likelihood of the child's reunification with his/her primary family.[139]

For generations, extended families and kin networks have cared for children whose parents are experiencing challenges or are in need of support. In addition, many African Canadians come

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[134] *Ibid.*
[135] *Supra* Note 133 at 10-11.
[136] Ene Underwood, Barry Lewis & Wendy Thomson, Commission to Promote Sustainable Child Welfare, "Realizing A Sustainable Child Welfare System in Ontario" (19 September 2012) online: <http://www.children.gov.on.ca/htdocs/English/documents/topics/childrensaid/commission/2012sept-Final_report.pdf>.
[137] The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). "Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the rights of Children." Interim Report: Standing Senate Committee on Human Rights. November 2005.
[138] The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). "Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the rights of Children." Interim Report: Standing Senate Committee on Human Rights. November 2005.
[139] *Supra* Note 132 at 11

from societies where the nuclear family is not the norm and where more importance is placed on the clan or the extended family. 39 Nonetheless, reports to the ACLC suggest that extended family members and community members of African Canadian children in care are often dismissed outright as viable alternatives. As a result, African Canadian children are not only taken out of their immediate homes, they are also removed from their families, communities and cultures. This has serious cultural implications for African Canadians over and above non-racialized children and youth. As acknowledged by the Supreme Court of Canada, "[r]ace can be a factor in determining the best interests of the child because it is connected to the culture, identity and emotional well-being of the child."[140]

> Culture is the essence of being human. Culture is the bridge that links the present with the past and the past with the future. Culture provides a sense of historical continuity. It is a protective device structured to eliminate trial and error in the past and the future. Culture is second nature. It is a person's values, beliefs, learnings [sic.], practices, and understandings that are passed on.[141]

Children of African descent learn about their identity from within the home and community. African Canadian children that are removed from their homes, schools, religious institutions, friends, and families are thus disengaged from their cultural background and denied the opportunity for optimal development and functioning. As suggested by academics in the context of the over-representation of Aboriginal children and youth in the Canadian child welfare system and African American children in the US child welfare system, this apparent disregard for continuity in the upbringing, and ethnic, religious, cultural and linguistic background of African Canadian children amounts to "institutionalized assimilation."[142] This amounts to a violation of Article 24 the *ICCPR* and the protection it is meant to afford African Canadian children.

African Canadian Children and the School to Prison Pipeline

In Canada's largest school board, the Toronto District School Board (TDSB), African Canadian students make up approximately 12% of high school students, yet these students are disturbingly over-represented in suspension rates, making up 31 % of all suspensions.[143]

The percentage of African Canadian primary school students suspended from school in 2011-2012 was 1.5%, while the rate of suspension for white students was 0.5. In TDSB high schools

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[140] *Ibid.*
[141] *Supra* Note 132 at 12
[142] *Supra* Note 132 at 12
[143] Jim Rankin, "Toronto school suspension rates highest for black and aboriginal students", *Toronto Star.* See online:
http://www.thestar.com/news/gta/2013/03/22/toronto_school_suspension_rates_highest_for_black_and_aboriginal_students.html.

the rate of suspension among African Canadian students in 2011-2012 was 8.6%. For white high school students during that same year, it was 2.9%.[144]

Disproportionate rates of discipline lead to what is commonly referred to as the "school to prison pipeline." According to this theory, those students who are disciplined are more likely to drop out, and those students who drop out are more likely to turn to criminality. As an example, in 2009, a *Toronto Star* analysis found that Toronto schools with the highest suspension rates tended to be in parts of the city that also had the highest rates of provincial incarceration. 82 As another example, recent figures show that more than 70% of Canadian inmates did not complete high school. 83 The above statistics show that African Canadian students continue to be disproportionately targeted for school discipline. As such, it is no surprise that they continue to leave school and enter the prison system at such alarming rates. This is points to Canada's failure to ensure that African Canadian children enjoy, without discrimination, the right to such measures of protection as are required as minors, pursuant to Article 24 of the *ICCPR*.

Article 17 in relation to Articles 3 and 24 - Crisis of Housing and Homelessness for African Canadian Families

The housing crisis in Canada is well recognized internationally and domestically. After a 2007 mission to Canada, the Special Rapporteur on Adequate Housing declared a "national emergency" of inadequate housing and homelessness in Canada.[145] The international human rights expert members of the Committee on Economic, Social and Cultural Rights have also called upon Canada's "federal, provincial and territorial governments to address homelessness and inadequate housing as a national emergency".[146]

Canada's international obligation to ensure adequate housing is recognized in multiple ratified covenants. While Article 11(1) of the *ICESCR*[147] explicitly outlines the right to housing, Article 17 of the *ICCPR* protects persons from arbitrary or unlawful interference with their home. The obligation of a State to realize Article 17 of the *ICCPR* is not qualified by State's availability of resources. The preamble of the *ICCPR* notes the interconnection of Article 17 with other violations of civil and political rights, such as the right to life, right to security of the person, right to non-interference with privacy, family and home and the right to peaceful enjoyment of possessions:

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144 http://www.tdsb.on.ca/Portals/0/AboutUs/Research/CaringSafeSchoolsCensus201112.pdf

145 Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Addendum, MISSION TO CANADA* (9 to 22 October 2007)*, A/HRC/10/7/Add.3 17 February 2009, paragraph 32. Miloon Kothari, the UN Special Rapporteur on Housing, called the housing and homelessness crisis in Canada a "national emergency."

146 CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4 - E/C.12/CAN/CO/5, para. 62.

147 *International Covenant on Economic and Social Cultural Rights*, GA Res. 2200A (XXI), 21 UN GAOR, Supp. No. 16 at 49, UN Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976

> the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his [or her] civil and political rights, as well as his [or her] economic, social and cultural rights.

Further, Canada ratified the *Universal Declaration of Human Rights* (*UDHR*) that unequivocally recognizes the basic right to housing:

> Everyone has the right to a standard of living adequate for the health and wellbeing of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care and necessary social services...[148]

Despite the breadth of Canada's codified obligations to housing, the country remains the only G8 nation without a federal housing strategy. Each year in Canada, 235,000 are homeless and almost one in five experience extreme housing problems due to financial affordability.[149] The waitlist for affordable housing in Ontario has reached an all-time high, with 165,069 households in Ontario on the waiting list as of December 2013.[150] With the wait list increasing every year since 2006 and average wait times spanning from four years and reaching more than ten years, the lack of financially accessible housing in Ontario is urgent.[151]

The government of Canada's sixth Periodic Report on compliance with the *ICCPR* does not address the condition of African Canadians as one of the most vulnerable groups with higher rates of poverty and housing insecurity than other Canadians, with exception to Indigenous communities. Poverty reduces the quality of housing Africa Canadians can access, which makes it more likely that African Canadians live in, and move into, neighbourhoods with lower socio-economic status.[152]

The right to live free from eviction and unsafe housing can only be achieved if conditions are created whereby the government prevents eviction and the systemic pattern of housing instability caused by poverty. The housing crisis in Canada disproportionately impacts African Canadians because they are more likely to experience poverty, low-income jobs and racial and socio-economic discrimination in securing housing. In 2011, 25% of the African Canadian population in Canada lived below the poverty line compared to 11% of the non-racialized population.[153] Canadians of African descent are more than twice as likely as those in the overall population to have low incomes.

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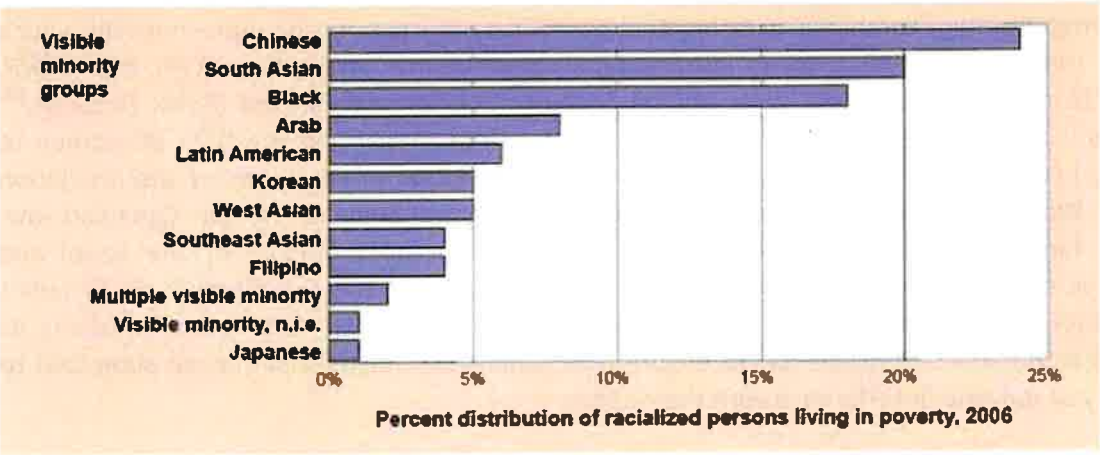
[148] *Universal Declaration of Human Rights*, GA Res 217A (III) A, UN Doc A/810 (1948) 71 at Article 25.
[149] Stephen Gaetz, Tanya Gulliver & Tim Richter, "The State of Homelessness in Canada 2014" (2014) Homeless Hub Press at 5, online: <http://www.homelesshub.ca/SOHC2014> at 5.
[150] *Waiting Lists Survey 2014*, (Ontario: ONPHA's Report on Waiting List Statistics for Ontario, 2014) at 4.
[151] *Waiting Lists Survey 2014*, (Ontario: ONPHA's Report on Waiting List Statistics for Ontario, 2014) at 4.
[152] R. Alan Walks and Larry Bourne, "Ghettos in Canadian Cities? Racial segregation, ethnic enclaves and poverty concentration in Canadian urban areas" (2006) 50(3) The Canadian Geographer 273 at 279, online: http://neighbourhoodchange.ca/wp-content/uploads/2011/06/Walks-Bourne-2006-Ghettos-in-Canadas-Cities.pdf
[153] National Council of Welfare, "A Snapshot of Racialized Poverty in Canada," (January 2012), online:

The 2006 Census data, which is the last available census data before the federal government cancelled the country's mandatory long form Census, reinforces the reality that African Canadians are among the nations poorest, especially in urban centres. As of 2006, African Canadians earn 75.6 cents for every dollar a non-racialized worker earns, with an annual earnings gap of $9,101.[154] The racialized poverty among African Canadians today mirrors the economic disparity in 2000, where 47% of African Canadian children under the age of 15 lived in a situation considered to be low-income, compared with 19% of all children in Canada.[155] The Table below identifies the poverty rate of African Canadians based on the 2006 census data results where the poverty rate for non-racialized persons was 9%, while that of racialized persons was 22%.[156]



Emplo

yment and Social Development Canada, Government of Canada, "Snapshot of racialized Poverty in Canada."[157]

The Table above must be considered in light of how the family dynamic of African Canadian families who are considerably less likely than other people to be married makes the levels of poverty more stark as less income earners contribute to a household. In 2001, just 37% of the

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<http://www.ncw.gc.ca/l.3bd.2t.1ilshtml@-eng.jsp?lid=379&fid=1>.

[154] Sheila Block & Grace-Edward Galabuzi, "CANADA'S COLOUR CODED LABOUR MARKET: The Gap for Racialized Workers," The Wellesley Institute (March 2011) online: <http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf> at 13.

[155] Statistics Canada, "The African Community in Canada" (Ottawa: Statistics Canada, 2007) online: Statistics Canada <http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007010-eng.htm>.

[156] National Council of Welfare, "A Snapshot of Racialized Poverty in Canada," (January 2012), online: <http://www.ncw.gc.ca/l.3bd.2t.1ilshtml@-eng.jsp?lid=379&fid=1>.

[157] Employment and Social Development Canada, "Snapshot of racialized Poverty in Canada," (Ottawa: EDSC, January 2012)
online: EDSC http://www.edsc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml.

Poverty is measured using Statistics Canada's after-tax low income cut-offs (LICOs). The LICOs are only available for persons in private households in the ten provinces. That means the data presented above does not include residents of the Yukon, the Northwest Territories and Nunavut, persons living on Indian reserves and residents of institutions

African population aged 15 and over was married, compared with 50% of the overall adult Canadian population. African people are also less likely than other Canadians to live in a common-law relationship. That year, 6% of Africans aged 15 and over were living in a common-law union, compared with 10% of all adult Canadians.[158] In 2001, women made up 87% of all African lone parents, while the figure in the rest of the population was 81%.

Policy changes by the federal and provincial governments have made housing access a financial impossibility for the disproportionate amount of Canada's poor that are African Canadian families. The 2006 concluding observations regarding Canada's compliance with the *ICCPR*, noted concern that "severe cuts in welfare programmes have had a detrimental effect on women and children, for example in British Columbia, as well as on Aboriginal people and Afro-Canadians."[159]Action on behalf of the governments of Canada has resulted in the gutting of social programming, combined with inaction to address the gap in adequate housing, which runs in direct contradiction to its international commitments under the *ICCPR*, the *UDHR*, Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*),[160] sections 7 and 15 of the *Charter*,[161] and further does not satisfy and the right of women to housing in Article 14(h) of the *Convention on the Elimination of All Forms of Discrimination against Women*[162]. Due to the lack of concern for the well-being of African Canadian low-income families, Black communities in Canada remain at near bottom of the social and economic strata.[163] For the purpose of the current review of the Government of Canada's compliance with the *ICCPR*, it should be recognized that this State Party is not satisfying its obligations pursuant to Article 17, to ensure that African Canadians shall not be subjected to arbitrary or unlawful interference with their home.

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[158] Employment and Social Development Canada, "Snapshot of racialized Poverty in Canada," (Ottawa: EDSC, January 2012)
online: EDSC http://www.edsc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml.

[159] United Nations, Human Rights Committee, Eighty-fifth Session, 20 April 2006, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, concluding observations of the Human Rights Committee.

[160] Article 11(1) states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." *United Nations International Covenant on Economic, Social, and Cultural Rights*, General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, online: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

[161] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[162] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249. It is worth noting that this convention protects women's equality rights in the area of housing. It does not establish a free standing right to housing specific to women.

[163] Their socio-economic circumstances and daily lived experiences partly explain, although not fully reflected in, Canada's 9th ranking in the UNDP Human Poverty Index (for OECD countries).

PART III - RECOMMENDATIONS

Based on all of the foregoing, the African Canadian Legal Clinic requests that the Human Rights Committee to recommend that the Government of Canada do the following:

Race-Based Disaggregated Data:

1. Reintroduce the mandatory long-form census in order to provide governments and community groups with an accurate statistical basis from which to pursue structural changes and rectify policies, programs and legislation that have a disparate impact on African Canadians;

2. Provide in its next period report information on any data collection measures implemented and their results;

3. Implement a nationwide mandatory disaggregated race-based data collection policy, and collect and make publicly accessible disaggregated data on police stops, searches, arrest and releases;

4. In its next period report, provide information on specific measures taken to reduce inequities affecting African Canadians at the national, provincial and territorial levels;

Reforms in the Criminal Justice System

5. Adopt national and provincial measures, including legislation and external complaint mechanism, to end racial profiling and carding by law enforcement and national security agencies

6. Provide in its next Periodic Report, information on any data collection measures implemented and their results;

7. Conduct an extensive study of systemic anti-Black racism and the over-representation of African Canadians at all levels of the criminal justice system. This should include an in-depth demonstration of an intersectional analysis along the lines of race, age, gender and mental health status to ensure that effective and corrective action can be taken for not only African Canadian male adults, but for African Canadian women, youth, and African Canadians with mental health concerns, as well.

8. Develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of African Canadians, including such things as sentencing reforms and training on anti-Black racism for members of the police, Crown Prosecutors and members of the Judiciary;

9. Ensure that mandatory minimum sentences are eliminated and not imposed where they could or do result in the over-incarceration of African Canadians;

10. Increase the number of African Canadian staff and culturally responsive programming, supports and services to African Canadian inmates with the aim to reduce the disparity in admissions of African Canadians to segregation/solitary confinement, and discriminatory treatment experienced by this group at the hands of prison guards and administrators;

11. Ensure that the timelines for criminal pardons are not extended;

12. Ensure that conditional sentences continue to be available for those convicted of less serious violent or property offences;

13. Ensure that custodial sentences continue to be reserved as a last resort for young offenders, and expand rehabilitative and community-based programs for this group;

14. Establish rules, regulations or protocols which enhance equal treatment of child offenders and train all professionals involved in the administration of juvenile justice on their anti-discrimination obligations under domestic and international human rights instruments;

15. Adopt national and provincial measures, including legislation and external complaint mechanisms, to end racial profiling by law enforcement and national security agencies;

16. Implement measures to abolish carding, street checks and any similar practice of police forces arbitrarily engaging civilians in non-criminal encounters to extract and store their personal information in a database.

17. Immediately engage a process of reviewing and expunging all carding, street-check and non-conviction data currently in the police databases that reveal no material or relevant connection to an incidence of crime or an active criminal investigation;

18. Work with the provinces towards adopting consistent Anti-Racial Profiling legislation at the federal and provincial levels;

19. Adopt legislation forbidding the release of non-conviction records by police forces and law enforcement agencies except in very exceptional circumstances that are clearly articulated in legislation and/or regulations.

20. Amend provincial and federal human rights legislation where such legislation does not explicitly forbid discrimination on the basis of a non-conviction record of offence;

21. Develop and implement with the African Canadian community, a provincial and national strategy for identifying, providing training on, addressing and reducing anti-Black hate crimes.

Child Welfare Reforms:

22. Provide disaggregated race-based data on the number of children: a) separated from their parents; b) placed in institutions; placed with foster families; d) placed in kinship service or kinship care; and, e) adopted domestically or through inter-country adoptions;

23. Examine the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty, particularly if the parent(s) is/are willing to do what is necessary to change the situation;

24. Where poverty-based "neglect", as opposed to "abuse" is the reason for the involvement of the child welfare agency, provide the necessary supports to improve the family's socio-economic security;

25. Work together with African Canadian agencies and communities to ensure that African Canadian agencies and communities to ensure that African Canadian families are provided with adequate supports to keep Black children at home with their natural families and/or to ensure that if an African Canadian child must be removed, they are placed in kinship care or a culturally responsive setting;

26. Implement policies that ensure that children who are placed in foster care or are adopted are placed in culturally responsive familial settings in which they can maintain their language, religion, culture and identity;

27. Conduct a review of racial disparities in the Child Welfare System by the Ontario Human Rights Commission. In 2011, Quebec's human rights commission undertook an in-depth and thorough review of racial profiling, in which it devoted a lengthy examination of disparities of African Canadian child welfare as manifested in Quebec. The ACLC urges the Ontario Human Rights Commission to do the same.[164]

28. Amend Ontario's Child and Family Services Act to entitle African Canadians to provide, wherever possible, their own child and family services and provide services in a manner that recognizes the culture, heritage and traditions of the child and the concept of the extended family;

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[164] Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011)

Education Reforms

29. Undertake a review of suspension and expulsion rates of African Canadian students and develop an intervention strategy for reversing and eliminating the school to prison pipeline;

30. Take steps to ensure that parents of suspended and expelled African Canadian students are made fully aware of their rights and the resources, services and programs available to them;

Housing Reforms

31. Partner with provincial governments to immediately undertake a study, review and provide substantive recommendations and a plan of action to address the significant, yet unacknowledged housing crisis facing the African Canadian community;

National Commitment to Eliminating Anti-Black Racism

32. Publicize and develop with provincial governments a plan for the Government of Canada's participation in executing the Programme of Activities for the Implementation of the International Decade for People of African Descent;

33. Re-commit to a national anti-racism strategy such as Canada's 2005 Action Plan Against Racism;

Previous Human Rights Committee Recommendations

34. Implement the previous United Nations recommendations that the Government of Canada:

a) Collect and, in its next Periodic Report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural right s of various groups of its population;

b) Coordinate its various policies, strategies and programs on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance

their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds;

c) Prevent racial profiling at all stages of criminal procedure by: (a) Taking necessary steps to prevent arrests, stops, searches and investigations and over - incarceration targeting different groups, particularly African Canadians, on the basis of their ethnicity; (b) Investigating and punishing the practice of racial profiling; (c) Training prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention; (d) Providing the Committee with statistical data on treatment of African Canadians in the criminal justice system; (e) Conducting a study on the root causes of the over-representation of Africans Canadians in the system of criminal justice;

d) Establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee should recommend that the Government of Canada establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the *ICCPR*. Furthermore, the Committee should once again recommend that the Government of Canada define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, African Canadian children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

e) Include information in its next Periodic Report on measures and programs relevant to the *ICCPR* undertaken by the State party in follow - up to the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference. The ACLC also asks that the Committee also recommend that the State party: (a) Take urgent measures to address the over-representation of African Canadian children in the criminal justice system and out-of-home care;

f) Intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counseling in child-rearing, and, in the case of African Canadian populations, culturally appropriate services to enable them to fulfill their parental role.

g) Ensure that funding and other support, including welfare services, provided to Aboriginal, African Canadian, and other minority children is comparable in quality and accessibility to services are provided to other children in the State party and is adequate to meet their needs.

Policing Indigenous Peoples on Two Colonial Frontiers: Australia's Mounted Police and Canada's North-West Mounted Police

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This article examines the ways in which colonial policing and punishment of Indigenous peoples evolved as an inherent part of the colonial state-building process on the connected 19th century frontiers of south-central Australia and western Canada. Although there has been some excellent historical scholarship on the relationship between Indigenous people, police and the law in colonial settings, there has been little comparative analysis of the broader, cross-national patterns by which Indigenous peoples were made subject to British law, most especially through colonial policing practices. This article compares the roles, as well as the historical reputations, of Australia's mounted police and Canada's North-West Mounted Police (NWMP) in order to argue that these British colonies, being within the ambit of the law as British subjects did not accord Indigenous peoples the rights of protection that status was intended to impart.

Keywords: colonial policing, colonial justice, Indigenous people and the law, comparative history

By the 1840s Indigenous peoples across Australia's colonies were considered British subjects, in theory protected by and subject to the rule of law. Yet as the historical records of 19th century Australia and other parts of the British Empire show, 'being within rather than beyond the pale of English law' did not accord Indigenous peoples the protection their status as British subjects was intended to impart (Evans, 2005, pp. 57–58). The dilemmas of attempting to impose a rule of law upon a people who in a legal sense were, but in a practical sense were not, subject to it were not unique to the Australian frontier, but were faced across the British Empire by colonial administrators who had to facilitate European settlement in regions already occupied by Indigenous peoples. Through a comparative analysis of Australian and Canadian frontiers, this essay will consider how policing and punishment evolved as

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White Fragility

by
Robin DiAngelo

White people in North America live in a social environment that protects and insulates them from race-based stress. This insulated environment of racial protection builds white expectations for racial comfort while at the same time lowering the ability to tolerate racial stress, leading to what I refer to as White Fragility. White Fragility is a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium. This paper explicates the dynamics of White Fragility.

I am a white woman. I am standing beside a black woman. We are facing a group of white people who are seated in front of us. We are in their workplace, and have been hired by their employer to lead them in a dialogue about race. The room is filled with tension and charged with hostility. I have just presented a definition of racism that includes the acknowledgment that whites hold social and institutional power over people of color. A white man is pounding his fist on the table. His face is red and he is furious. As he pounds he yells, "White people have been discriminated against for 25 years! A white person can't get a job anymore!" I look around the room and see 40 employed people, all white. There are no people

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of color in this workplace. Something is happening here, and it isn't based in the racial reality of the workplace. I am feeling unnerved by this man's disconnection with that reality, and his lack of sensitivity to the impact this is having on my co-facilitator, the only person of color in the room. Why is this white man so angry? Why is he being so careless about the impact of his anger? Why are all the other white people either sitting in silent agreement with him or tuning out? We have, after all, only articulated a definition of racism.

White people in North America live in a social environment that protects and insulates them from race-based stress.[1] Fine (1997) □ □ □ □□ when she observes "... how Whiteness accrues privilege and status; gets itself surrounded by protective pillows of resources and/or □ □ □ □□ Whiteness repels gossip and voyeurism and instead demands dignity" (p. 57). Whites are rarely without these "protective pillows," and when they are, it is usually temporary and by choice. This insulated environment of racial privilege builds white expectations for racial comfort while at the same time lowering the ability to tolerate racial stress.

For many white people, a single required multicultural education course taken in college, or required "cultural competency training" in their workplace, is the only time they may encounter a direct and sustained challenge to their racial understandings. But even in this arena, not all multicultural courses or training programs talk directly about racism, much less address white privilege. It is far more the norm for these courses and programs to use racially coded language such as "urban," "inner city," and "disadvantaged" but to rarely use "white" or "over-advantaged" or "privileged." This racially coded language reproduces racist images and perspectives while it simultaneously reproduces the comfortable illusion that race and its problems are what "they" have, not us. Reasons why the facilitators of these courses and trainings may not directly name the dynamics and □ □ □ □ □ □ of racism range from the lack of a valid analysis of racism by white facilitators, personal and economic survival strategies for facilitators of color, and the overall pressure from management to keep the content comfortable and palatable for whites. However, if and when an educational program does directly address racism and the privileging of whites, common white responses include anger, withdrawal, emotional incapacitation, guilt, argumentation, and cognitive dissonance (all of which reinforce the pressure on facilitators to avoid directly addressing racism). So-called progressive whites may not respond with anger, but may still insulate themselves via claims that they are beyond the need for engaging with the content because they "already had a class on this" or "already know this." These reactions are often seen in anti-racist education endeavors as

1. Although white racial insulation is somewhat mediated by social class (with poor and working class urban whites being generally less racially insulated than suburban or rural whites), the larger social environment insulates and protects whites as a group through institutions, cultural representations, media, school textbooks, movies, advertising, dominant discourses, etc.

forms of resistance to the challenge of internalized dominance (Whitehead & Wittig, 2005; Horton & Scott, 2004; McGowan, 2000, O'Donnell, 1998). These reactions do indeed function as resistance, but it may be useful to also conceptualize them as the result of the reduced psychosocial stamina that racial insulation inculcates. I call this lack of racial stamina "White Fragility."

Although mainstream □ □ □ □ □of racism are typically some variation of individual "race prejudice", which anyone of any race can have, Whiteness scholars □ □ □□□
actions, and beliefs that systematize and perpetuate an unequal distribution of privileges, resources and power between white people and people of color (Hilliard, 1992). This unequal distribution □ □ □ □□□
of color overall and as a group. Racism is not □ □ in the U.S.; it does not □ □ □ back and forth, one day □ □ □ □ □□
people of color. The direction of power between whites and people of color is historic, traditional, normalized, and deeply embedded in the fabric of U.S. society (Mills, 1999; Feagin, 2006). Whiteness itself refers to the □ □ □ □□□
of racism that serve to elevate white people over people of color. This □ □ □ □ □ □
counters the dominant representation of racism in mainstream education as isolated in discrete behaviors that some individuals may or may not demonstrate, and goes beyond naming □ □ □ □□□
as actively shaped, affected, □ □ □ □□□
the individual and collective consciousness' formed within it (Frankenberg, 1997; Morrison, 1992; Tatum, 1997). Recognizing that the terms I am using are not "theory neutral 'descriptors' but theory-laden constructs inseparable from systems of injustice" (Allen, 1996, p.95), I use the terms white and Whiteness to describe a social process. Frankenber□ □ □ □ □ □ □□□ □

> Whiteness is a location of structural advantage, of race privilege. Second, it is a 'standpoint,' a place from which White people look at ourselves, at others, and at society. Third, 'Whiteness' refers to a set of cultural practices that are usually unmarked and unnamed. (p.1)

Frankenberg and other theorists (Fine, 1997; Dyer, 1997; Sleeter, 1993; Van Dijk, 1993) use Whiteness to signify a set of locations that are historically, socially, politically and culturally produced, and which are intrinsically linked to dynamic relations of domination. Whiteness is thus conceptualized as a constellation of processes and practices rather than as a discrete entity (i.e. skin color alone). Whiteness is dynamic, relational, and operating at all times and on myriad levels. These processes and practices include basic rights, values, beliefs, perspectives and experiences purported to be commonly shared by all but which are actually only consistently afforded to white people. Whiteness Studies begin with the premise that racism and white privilege exist in both traditional and modern forms, and rather than work to prove its existence, work to reveal it. This article

will explore the dynamics of one aspect of Whiteness and its effects, White Fragility.

Triggers

White Fragility is a state in which even a minimum amount of racial stress becomes intolerable, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium. Racial stress results from an interruption to what is racially familiar. These interruptions can take a variety of forms and come from a range of sources, including:

- Suggesting that a white person's viewpoint comes from a racialized frame of reference (challenge to objectivity);
- People of color talking directly about their racial perspectives (challenge to white racial codes);
- People of color choosing not to protect the racial feelings of white people in regards to race (challenge to white racial expectations and need/entitlement to racial comfort);
- People of color not being willing to tell their stories or answer questions about their racial experiences (challenge to colonialist relations);
- A fellow white not providing agreement with one's interpretations (challenge to white solidarity);
- Receiving feedback that one's behavior had a racist impact (challenge to white liberalism);
- Suggesting that group membership is □ □ □ □ □ (challenge to individualism);
- An acknowledgment that access is unequal between racial groups (challenge to meritocracy);
- Being presented with a person of color in a position of leadership (challenge to white authority);
- Being presented with information about other racial groups through, for example, movies in which people of color drive the action but are not in stereotypical roles, or multicultural education (challenge to white centrality).

In a white dominant environment, each of these challenges becomes exceptional. In turn, whites are often at a loss for how to respond in constructive ways. Whites have not had to build the cognitive or affective skills or develop the stamina that would allow for constructive engagement across racial divides. Bourdieu's concept of *habitus* (1993) may be useful here. According to Bourdieu, habitus is a socialized subjectivity; a set of dispositions which generate practi-

ces and perceptions. As such, habitus only exists in, through and because of the practices of actors and their interaction with each other and with the rest of their environment. Based on the previous conditions and experiences that produce it, habitus produces and reproduces thoughts, perceptions, expressions and actions. Strategies of response to "disequilibrium" in the habitus are not based on conscious intentionality but rather result from unconscious dispositions towards practice, and depend on the power position the agent occupies in the social structure. White Fragility may be conceptualized as a product of the habitus, a response or "condition" produced and reproduced by the continual social and material advantages of the white structural position.

Omi & Winant posit the U.S. racial order as an "unstable equilibrium," kept equilibrated by the State, but still unstable due to continual □ □ □ □of□interests and challenges to the racial order (pp. 78-9). Using Omi & Winant's concept of unstable racial equilibrium, white privilege can be thought of as unstable racial equilibrium at the level of habitus. When any of the above triggers (challenges in the habitus) occur, the resulting disequilibrium becomes intolerable. Because White Fragility □ □ its support in and is a function of white privilege, fragility and privilege result in responses that function to restore equilibrium and return the resources "lost" via the challenge - resistance towards the trigger, shutting down and/or tuning out, indulgence in emotional incapacitation such as guilt or "hurt feelings", exiting, or a combination of these responses.

Factors that inculcate White Fragility

Segregation

The □ □factor leading to White Fragility is the segregated lives which most white people live (Frankenberg, Lee & □ □ □ □□□
proximity to people of color (and this would be exceptional outside of an urban or temporarily mixed class neighborhood), segregation occurs on multiple levels, including representational and informational. Because whites live primarily segregated lives in a white-dominated society, they receive little or no authentic information about racism and are thus unprepared to think about it critically or with complexity. Growing up in segregated environments (schools, workplaces, neighborhoods, media images and historical perspectives), white interests and perspectives are almost always central. An inability to see or consider □ □ □ □ □ □ □ in the perspectives of people of color results (Collins, 2000).

Further, white people are taught not to feel any loss over the absence of people of color in their lives and in fact, this absence is what □ □ □ their schools and neighborhoods as "good;" whites come to understand that a "good school" or "good neighborhood" is coded language for "white" (Johnson & Shapiro, 2003). The quality of white space being in large part measured via the absence of people of color (and Blacks in particular) is a profound message indeed, one that is deeply internalized and reinforced daily through normalized discourses about good

schools and neighborhoods. This dynamic of gain rather than loss via racial segregation may be the most profound aspect of white racial socialization of all. Yet, while discourses about what makes a space good are tacitly understood as racially coded, this coding is explicitly denied by whites.

Universalism & Individualism

Whites are taught to see their perspectives as objective and representative of reality (McIntosh, 1988). The belief in objectivity, coupled with positioning white people as outside of culture (and thus the norm for humanity), allows whites to view themselves as universal humans who can represent all of human experience. This is evidenced through an unracialized identity or location, which functions as a kind of blindness; an inability to think about Whiteness as an identity or as a "state" of being that would or could have an impact on one's life. In this position, Whiteness is not recognized or named by white people, and a universal reference point is assumed. White people are just people. Within this construction, whites can represent humanity, while people of color, who are never just people but always most particularly black people, Asian people, etc., can only represent their own racialized experiences (Dyer, 1992).

The discourse of universalism functions similarly to the discourse of individualism but instead of declaring that we all need to see each other as individuals (everyone is different), the person declares that we all need to see each other as human beings (everyone is the same). Of course we are all humans, and I do not critique universalism in general, but when applied to racism, universalism functions to deny the □ □ □ □ □ □ □
universalism assumes that whites and people of color have the same realities, the same experiences in the same contexts (i.e. I feel comfortable in this majority white classroom, so you must too), the same responses from others, and assumes that the same doors are open to all. Acknowledging racism as a system of privilege conferred on whites challenges claims to universalism.

At the same time that whites are taught to see their interests and perspectives as universal, they are also taught to value the individual and to see themselves as individuals rather than as part of a racially socialized group. Individualism erases history and hides the ways in which wealth has been distributed and accumulated over generations to □ □ □ whites today. It allows whites to view themselves as unique and original, outside of socialization and unaffected by the relentless racial messages in the culture. Individualism also allows whites to distance themselves from the actions of their racial group and demand to be granted the □ □ □ of the doubt, as individuals, in all cases. A corollary to this unracialized identity is the ability to recognize Whiteness as something that is □ □ □ □ and that operates in society, but to not see how it relates to one's own life. In this form, a white person recognizes Whiteness as real, but as the individual problem of other "bad" white people (DiAngelo, 2010a).

Given the ideology of individualism, whites often respond defensively when linked to other whites as a group or "accused" of collectively □ □ □ □ □□□ racism, because as individuals, each white person is "different" from any other white person and expects to be seen as such. This narcissism is not necessarily the result of a consciously held belief that whites are superior to others (although that may play a role), but a result of the white racial insulation ubiquitous in dominant culture (Dawkins, 2004; Frankenberg, Lee & □ □ □ □□□ white inability to see non-white perspectives as □ □ □ □ □□□ □ and impotent □ □ □ □which have little or no long-term momentum or political usefulness (Rich, 1979).

Whites invoke these seemingly contradictory discourses—we are either all unique or we are all the same—interchangeably. Both discourses work to deny white privilege and the □ □ □ □ □ □ □ individual or being a human outside of a racial group is a privilege only afforded to white people. In other words, people of color are almost always seen as "having a race" and described in racial terms ("the black man") but whites rarely are ("the man"), allowing whites to see themselves as objective and non-racialized. In turn, being seen (and seeing ourselves) as individuals outside of race frees whites from the psychic burden of race in a wholly racialized society. Race and racism become their problems, not ours. Challenging these frameworks becomes a kind of unwelcome shock to the system.

The disavowal of race as an organizing factor, both of individual white consciousness and the institutions of society at large, is necessary to support current structures of capitalism and domination, for without it, the correlation between the distribution of social resources and unearned white privilege would be evident (Flax, 1998). The existence of structural inequality undermines the claim that privilege is simply a □ □ □ □ □ □ be hidden or □ □ □ □as□resulting from lack of effort (Mills, 1997; Ryan, 2001). Individualism accomplishes both of these tasks. At the same time, the individual presented as outside these relations cannot exist without its disavowed other. Thus, an essential dichotomy is formed between □ □ □ □ □□□ □ unracialized individual. Whites have deep investments in race, for the abstract depends on the particular (Flax, 1998); they need raced others as the backdrop against which they may rise (Morrison, 1992). Exposing this dichotomy destabilizes white identity.

Entitlement to racial comfort

In the dominant position, whites are almost always racially comfortable and thus have developed unchallenged expectations to remain so (DiAngelo, 2006b). Whites have not had to build tolerance for racial discomfort and thus when racial discomfort arises, whites typically respond as if something is "wrong," and blame the person or event that triggered the discomfort (usually a person of color).

This blame results in a socially-sanctioned array of counter-moves against the perceived source of the discomfort, including: penalization; retaliation; isolation; ostracization; and refusal to continue engagement. White insistence on racial comfort ensures that racism will not be faced. This insistence also functions to punish those who break white codes of comfort. Whites often confuse comfort with safety and state that we don't feel safe when what we really mean is that we don't feel comfortable. This trivializes our history of brutality towards people of color and perverts the reality of that history. Because we don't think complexly about racism, we don't ask ourselves what safety means from a position of societal dominance, or the impact on people of color, given our history, for whites to complain about our safety when we are merely *talking* about racism.

Racial Arrogance

Ideological racism includes strongly positive images of the white self as well as strongly negative images of racial "others" (Feagin, 2000, p. 33). This self-image engenders a self-perpetuating sense of entitlement because many whites believe their □ □ □ □and professional successes are the result of their own efforts while ignoring the fact of white privilege. Because most whites have not been trained to think complexly about racism in schools (Derman-Sparks, Ramsey & Olsen Edwards, 2006; Sleeter, 1993) or mainstream discourse, and because it □ □ □ □ □ white dominance not to do so, we have a very limited understanding of racism. Yet dominance leads to racial arrogance, and in this racial arrogance, whites have no compunction about debating the knowledge of people who have thought complexly about race. Whites generally feel free to dismiss these informed perspectives rather than have the humility to acknowledge that they are unfamiliar, □ □ □ □ on them further, or seek more information. This intelligence and expertise are often trivialized and countered with simplistic platitudes (i.e. "People just need to…").

Because of white social, economic and political power within a white dominant culture, whites are positioned to legitimize people of color's assertions of racism. Yet whites are the least likely to see, understand, or be invested in validating those assertions and being honest about their consequences, which leads whites to claim that they disagree with perspectives that challenge their worldview, when in fact, they don't understand the perspective.Thus, theyconfuse not understanding with not agreeing. This racial arrogance, coupled with the need for racial comfort, also has whites insisting that people of color explain white racism in the "right" way. The right way is generally politely and rationally, without any show of emotional upset. When explained in a way that white people can see and understand, racism's validity may be granted (references to dynamics of racism that white people do not understand are usually rejected out of hand). However, whites are usually more receptive to validating white racism if that racism is constructed as residing in individual white people other than themselves.

Racial Belonging

White people enjoy a deeply internalized, largely unconscious sense of racial belonging in U.S. society (DiAngelo, 2006b; McIntosh, 1988). This racial belonging is instilled via the whiteness embedded in the culture at large. Everywhere we look, we see our own racial image □ □ □ □back to us – in our heroes and heroines, in standards of beauty, in our role-models and teachers, in our textbooks and historical memory, in the media, in religious iconography including the image of god himself, etc. In virtually any situation or image deemed valuable in dominant society, whites belong. Indeed, it is rare for most whites to experience a sense of not belonging, and such experiences are usually very temporary, easily avoidable situations. Racial belonging becomes deeply internalized and taken for granted. In dominant society, interruption of racial belonging is rare and thus destabilizing and frightening to whites.

Whites consistently choose and enjoy racial segregation. Living, working, and playing in racial segregation is unremarkable as long as it is not named or made explicitly intentional. For example, in many anti-racist endeavors, a common exercise is to separate into caucus groups by race in order to discuss issues □ □ □ □□□

presence. Generally, people of color appreciate this opportunity for racial fellowship, but white people typically become very uncomfortable, agitated and upset - even though this temporary separation is in the service of addressing racism. Responses include a disorienting sense of themselves as not just people, but most particularly white people; a curious sense of loss about this contrived and temporary separation which they don't feel about the real and on-going segregation in their daily lives; and anxiety about not knowing what is going on in the groups of color. The irony, again, is that most whites live in racial segregation every day, and in fact, are the group most likely to intentionally choose that segregation (albeit obscured in racially coded language such as seeking "good schools" and "good neighborhoods"). This segregation is unremarkable until it is named as deliberate – i.e. "We are now going to separate by race for a short exercise."I posit that it is the intentionality that is so disquieting – as long as we don't mean to separate, as long as it "just happens" that we live segregated lives, we can maintain a (fragile) identity of racial innocence.

Psychic freedom

Because race is constructed as residing in people of color, whites don't bear the social burden of race. We move easily through our society without a sense of ourselves as racialized subjects (Dyer, 1997). We see race as operating when people of color are present, but all-white spaces as "pure" spaces – untainted by race *vis á vis* the absence of the carriers of race (and thereby the racial polluters) – people of color. This perspective is perfectly captured in a familiar white statement, "I was lucky. I grew up in an all-white neighborhood so I didn't learn anything about ra-

cism." In this discursive move, whiteness gains its meaning through its purported lack of encounter with non-whiteness (Nakayama & Martin, 1999). Because racial segregation is deemed socially valuable while simultaneously unracial and unremarkable, we rarely, if ever, have to think about race and racism, and receive no penalty for not thinking about it. In fact, whites are more likely to be penalized (primarily by other whites) for bringing race up in a social justice context than for ignoring it (however, it is acceptable to bring race up indirectly and in ways that reinforce racist attitudes, i.e. warning other whites to stay away from certain neighborhoods, etc.). This frees whites from carrying the psychic burden of race. Race is for people of color to think about – it is what happens to "them" – they can bring it up if it is an issue for them (although if they do, we can dismiss it as a personal problem, the "race card", or the reason for their problems). This allows whites to devote much more psychological energy to other issues, and prevents us from developing the stamina to sustain attention on an issue as charged and uncomfortable as race.

Constant messages that we are more valuable – through representation in everything

Living in a white dominant context, we receive constant messages that we are better and more important than people of color. These messages operate on multiple levels and are conveyed in a range of ways. For example: our centrality in history textbooks, historical representations and perspectives; our centrality in media and advertising (for example, a recent Vogue magazine cover boldly stated, "The World's Next Top Models" and every woman on the front cover was white); our teachers, role-models, heroes and heroines; everyday discourse on "good" neighborhoods and schools and who is in them; popular TV shows centered around friendship circles that are all white; religious iconography that depicts god, Adam and Eve, and other key □ □ □ as white, commentary on new stories about how shocking any crime is that occurs in white suburbs; and, the lack of a sense of loss about the absence of people of color in most white people's lives. While one may explicitly reject the notion that one is inherently better than another, one cannot avoid internalizing the message of white superiority, as it is ubiquitous in mainstream culture (Tatum, 1997; Doane, 1997).

What does White Fragility look like?

A large body of research about children and race demonstrates that children start to construct ideas about race very early; a sense of white superiority and knowledge of racial power codes appears to develop as early as pre-school (Clark, 1963; Derman-Sparks, Ramsey, & Olsen Edwards, 2006). Marty (1999) states,

> As in other Western nations, white children born in the United States inherit the moral predicament of living in a white supremacist society. Raised to experience

> their racially based advantages as fair and normal, white children receive little if any instruction regarding the predicament they face, let alone any guidance in how to resolve it. Therefore, they experience or learn about racial tension without understanding Euro-Americans' historical responsibility for it and knowing virtually nothing about their contemporary roles in perpetuating it (p. 51).

At the same time that it is ubiquitous, white superiority also remains unnamed and explicitly denied by most whites. If white children become adults who explicitly oppose racism, as do many, they often organize their identity around a denial of the racially based privileges they hold that reinforce racist disadvantage for others. What is particularly problematic about this contradiction is that white moral objection to racism increases white resistance to acknowledging complicity with it. In a white supremacist context, white identity in large part rests upon a foundation of racial toleration and acceptance. Whites who position themselves as liberal often opt to protect what they perceive as their moral reputations, rather than recognize or change their participation in systems of inequity and domination. In so responding, whites invoke the power to choose when, how, and how much to address or challenge racism. Thus, pointing out white advantage will often trigger patterns of confusion, defensiveness and righteous indignation. When confronted with a challenge to white racial codes, many white liberals use the speech of self-defense (Van Dijk, 1992). This discourse enables defenders to protect their moral character against what they perceive as accusation and attack while
on restoring their moral standing through these tactics, whites are able to avoid the question of white privilege (Marty, 1999, Van Dijk, 1992).

Those who lead whites in discussions of race may
defense familiar. Via this discourse, whites position themselves as victimized, slammed, blamed, attacked, and being used as "punching bag[s]" (DiAngelo, 2006c). Whites who describe interactions in this way are responding to the articulation of counter narratives; nothing physically out of the ordinary has ever occurred in any inter-racial discussion that I am aware of. These self-defense claims work on multiple levels to: position the speakers as morally superior while obscuring the true power of their social locations; blame others with less social power for their discomfort; falsely position that discomfort as dangerous; and reinscribe racist imagery. This discourse of victimization also enables whites to avoid responsibility for the racial power and privilege they wield. By positioning themselves as victims of anti-racist efforts, they cannot be the of white privilege. Claiming that *they* have been treated unfairly via a challenge to their position or an expectation that they listen to the perspectives and experiences of people of color, they are able to demand that more social resources (such as time and attention) be channeled in their direction to help them cope with this mistreatment.

A cogent example of White Fragility occurred recently during a workplace anti-racism training I co-facilitated with an inter-racial team. One of the white

participants left the session and went back to her desk, upset at receiving (what appeared to the training team as) sensitive and diplomatic feedback on how some of her statements had impacted several people of color in the room. At break, several other white participants approached us (the trainers) and reported that they had talked to the woman at her desk, and she was very upset that her statements had been challenged. They wanted to alert us to the fact that she literally "might be having a heart-attack." Upon questioning from us, they □ □ □ □that they meant this *literally*. These co-workers were sincere in their fear that the young woman might actually physically die as a result of the feedback. Of course, when news of the woman's potentially fatal condition reached the rest of the participant group, all attention was immediately focused back onto her and away from the impact she had had on the people of color. As Vodde (2001) states, "If privilege is □ □ □ as a legitimization of one's entitlement to resources, it can also be □ □ □ □ as permission to escape or avoid any challenges to this entitlement" (p. 3).

The language of violence that many whites use to describe anti-racist endeavors is not without □ □ □ □ □ as it is another example of the way that White Fragility distorts and perverts reality. By employing terms that connote physical abuse, whites tap into the classic discourse of people of color (particularly African Americans) as dangerous and violent. This discourse perverts the actual direction of danger that exists between whites and others. The history of brutal, extensive, institutionalized and ongoing violence perpetrated by whites against people of color—slavery, genocide, lynching, whipping, forced sterilization and medical experimentation to mention a few—becomes profoundly trivialized when whites claim they don't feel safe or are under attack when in the rare situation of merely talking about race with people of color. The use of this discourse illustrates how fragile and ill-equipped most white people are to confront racial tensions, and their subsequent projection of this tension onto people of color (Morrison, 1992). Goldberg (1993) argues that the questions surrounding racial discourse should not focus so much on how true stereotypes are, but how the truth claims they offer are a part of a larger worldview that authorizes and normalizes forms of domination and control. Further, it is relevant to ask: Under what conditions are those truth-claims clung to most tenaciously?

Bonilla-Silva (2006) documents a manifestation of White Fragility in his study of color-blind white racism. He states, "Because the new racial climate in America forbids the open expression of racially based feelings, views, and positions, when whites discuss issues that make them uncomfortable, they become almost incomprehensible – I, I, I, I don't mean, you know, but…- " (p. 68). Probing forbidden racial issues results in verbal incoherence - digressions, long pauses, repetition, and self-corrections. He suggests that this incoherent talk is a function of talking about race in a world that insists race does not matter. This incoherence is one demonstration that many white people are unprepared to engage, even on a preliminary level, in an exploration of their racial perspectives that could lead to a shift in their understanding of racism. This lack of preparedness results in the

maintenance of white power because the ability to determine which narratives are authorized and which are suppressed is the foundation of cultural domination (Banks, 1996; Said, 1994; Spivak, 1990). Further, this lack of preparedness has further implications, for if whites cannot engage with an exploration of alternate racial perspectives, they can only reinscribe white perspectives as universal.

However, an assertion that whites do not engage with dynamics of racial discourse is somewhat misleading. White people do notice the racial locations of racial others and discuss this freely among themselves, albeit often in coded ways. Their refusal to directly acknowledge this race talk results in a kind of split consciousness that leads to the incoherence Bonilla-Silva documents above (Feagin, 2000; Flax, 1998; hooks, 1992; Morrison, 1992). This denial also guarantees that the racial misinformation that circulates in the culture and frames their perspectives will be left unexamined. The continual retreat from the discomfort of authentic racial engagement in a culture infused withracial disparity limits the ability to form authentic connections across racial lines, and results in a perpetual cycle that works to hold racism in place.

Conclusion

White people often believe that multicultural / anti-racist education is only necessary for those who interact with "minorities" or in "diverse" environments. However, the dynamics discussed here suggest that it is critical that all white people build the stamina to sustain conscious and explicit engagement with race. When whites posit race as non-operative because there are few, if any, people of color in their immediate environments, Whiteness is reinscribed ever more deeply (Derman-Sparks & Ramsey, 2006). When whites only notice "raced others," we reinscribe Whiteness by continuing to posit Whiteness as universal and non-Whiteness as other. Further, if we can't listen to or comprehend the perspectives of people of color, we cannot bridge cross-racial divides. A continual retreat from the discomfort of authentic racial engagement results in a perpetual cycle that works to hold racism in place.

While anti-racist efforts ultimately seek to transform institutionalized racism, anti-racist education may be most effective by starting at the micro level. The goal is to generate the development of perspectives and skills that enable all people, regardless of racial location, to be active initiators of change. Since all individuals who live within a racist system are enmeshed in its relations, this means that all are responsible for either perpetuating or transforming that system. However, although all individuals play a role in keeping the system active, the responsibility for change is not equally shared. White racism is ultimately a white problem and the burden for interrupting it belongs to white people (Derman-Sparks & Phillips, 1997; hooks, 1995; Wise, 2003). Conversations about Whiteness might best happen within the context of a larger conversation about racism. It is useful to start at the micro level of analysis, and move to the macro, from the individual out to the

interpersonal, societal and institutional. Starting with the individual and moving outward to the ultimate framework for racism – Whiteness – allows for the pacing that is necessary for many white people for approaching the challenging study of race. In this way, a discourse on Whiteness becomes part of a process rather than an event (Zúñiga, Nagda, & Sevig, 2002).

Many white people have never been given direct or complex information about racism before, and often cannot explicitly see, feel, or understand it (Trepagnier, 2006; Weber, 2001). People of color are generally much more aware of racism on a personal level, but due to the wider society's silence and denial of it, often do not have a macro-level framework from which to analyze their experiences (Sue, 2003; Bonilla-Silva, 2006). Further, dominant society "assigns" different roles to different groups of color (Smith, 2005), and a critical consciousness about racism varies not only between individuals within groups, but also between groups. For example, many African Americans relate having been "prepared" by parents to live in a racist society, while many Asian heritage people say that racism was never directly discussed in their homes (hooks, 1989; Lee, 1996). A macro-level analysis may offer a framework to understand different interpretations and performances across and between racial groups. In this way, all parties and efforts are not solely focused on whites (which works to re-center Whiteness).

Talking directly about white power and privilege, in addition to providing much needed information and shared ruption of common (and oppressive) discursive patterns around race. At the same time, white people often need to upon racial information and be allowed to make connections between the information and their own lives. Educators can encourage and support white participants in making their engagement a point of analysis. White Fragility doesn't always manifest in overt ways; silence and withdrawal are also functions of fragility. Who speaks, who doesn't speak, when, for how long, and with what emotional valence are all keys to understanding the relational patterns that hold oppression in place (Gee, 1999; Powell, 1997). Viewing white anger, defensiveness, silence, and withdrawal in response to issues of race through the framework of White Fragility may help frame the problem as an issue of stamina-building, and thereby guide our interventions accordingly.

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How the Lack of School Mental Health Staff Is Harming Students

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Contents

Executive Summary

The U.S. Department of Education recently required every public school to report the number of social workers, nurses, and psychologists employed for the first time in history. Data about school counselors had been required previously, but this report provides the first state-level student-to-staff ratio comparison for these other school-based mental health personnel, along with school counselors. It reviews state-level student-to-school-based mental health personnel ratios as well as data concerning law enforcement in schools. The report also reviews school arrests and referrals to law enforcement data, with particular attention to disparities by race and disability status. A key finding of the report is that schools are under-resourced and students are overcriminalized.

Today's school children are experiencing record levels of depression and anxiety, alongside multiple forms of trauma. According to the Centers for Disease Control and Prevention, the suicide rate among children ages 10 to 17 increased by 70 percent between 2006 and 2016.[1] Approximately 72 percent of children in the United States will have experienced at least one major stressful event—such as witnessing violence, experiencing abuse, or experiencing the loss of a loved one—before the age of 18.[2]

School counselors, nurses, social workers, and psychologists are frequently the first to see children who are sick, stressed, traumatized, may act out, or may hurt themselves or others. This is especially true in low-income districts where other resources are scarce. Students are 21 times more likely to visit school-based health centers for treatment than anywhere else.[3] Schools that employ more school-based mental health providers see improved attendance rates, lower rates of suspension and other disciplinary incidents, expulsion, improved academic achievement and career preparation, and improved graduation rates.[4] Data shows that school staff who provide health and mental health services to our children not only improve the health outcomes for those students, but also improve school safety.[5] However, there is no evidence that police in schools improve school safety—indeed, in many cases they are causing harm.[6] When in schools, police do what they are trained to do—detain, handcuff, and arrest. This leads to greater student alienation and a poorer school climate.

Given this information, we would expect school boards, school principals, and government leaders to be working to remove law enforcement from our schools and using every available resource to build up school-based health professionals. But that has not been the trend. Instead, funding for police in schools has been on the rise, while our public schools face a critical shortage of counselors, nurses, psychologists, and social workers. As this report reveals, millions of students are in schools with law enforcement but no support staff:

- 1.7 million students are in schools with police but no counselors.
- 3 million students are in schools with police but no nurses.
- 6 million students are in schools with police but no school psychologists.
- 10 million students are in schools with police but no social workers.
- 14 million students are in schools with police but no counselor, nurse, psychologist, or social worker.

Our report reveals that schools fortunate enough to have mental health professionals are still grossly understaffed. Professional standards recommend at least one counselor and one social worker for every 250 students, and at least one nurse and one psychologist for every 750 students and every 700 students

respectively. These staffing recommendations reflect a minimum requirement. Nonetheless, 90 percent of students in public schools fail to meet this standard when supporting students. Even in schools with a significant lack of health support staff, law enforcement presence is flourishing. Many states reported 2-3 times as many police officers in schools than social workers. Additionally, five states reported more police officers in schools than nurses.

The consequences for these funding decisions fall on the most vulnerable students. Teachers are often not equipped to deal with the special needs posed by children with disabilities. Furthermore, historically marginalized students, such as students of color, may attend schools with fewer resources and supports. When there are no other behavioral resources at hand, some teachers request help from law enforcement. This results in an increased criminalization of our youth: we found that schools with police reported 3.5 times as many arrests as schools without police. As a result, students with disabilities and students of color are most frequently criminalized. Consider these findings:

- Students with disabilities were arrested at a rate 2.9 times that of students without disabilities. In some states, they were 10 times as likely to be arrested than their counterparts.
- Black students were arrested at a rate 3 times that of white students. In some states, they were 8 times as likely to be arrested.
- Pacific Island/Native Hawaiian and Native American students were arrested at a rate 2 times that of white students.
- Latinx students were arrested at a rate 1.3 times that of white students.
- Black girls made up 16 percent of the female student population but were 39 percent of girls arrested in school. Black girls were arrested at a rate 4 times that of white girls. In North Carolina, Iowa, and Michigan, Black girls were more than 8 times as likely to be arrested than white girls.
- Native American girls had a school arrest rate 3.5 times that of white girls. Native American girls were 12 percent of girls in Montana but were 62 percent of female arrests in that state.
- Black and Latino boys with disabilities were 3 percent of students but were 12 percent of school arrests.

This report presents detailed results, state by state. It outlines which states have the least support staff and greatest police presence. In addition, it puts this data in context by reviewing the history of how we got here. Lastly, it presents key recommendations to reverse course, including:

- Federal, state, and local dollars must prioritize counselors, psychologists, social workers, and nurses instead of police.
- The Department of Education should not just continue to collect the data on school support staff and student interactions with police, it should also take steps to ensure the data is more complete and accurate.

Introduction

The nation's children are facing a crisis. They walk into schools and classrooms burdened by a barrage of social, emotional, and psychological issues. Today's school children are experiencing record levels of depression and anxiety alongside multiple forms of trauma.[7]

Mental Health and Schools. According to the Centers for Disease Control, the suicide rate among children ages 10 to 17 increased by *70 percent* between 2006 and 2016.[8] The recent wave of school shootings reminds us that unaddressed needs of children can result in tragic crisis. It is estimated that nearly 35 million children in the U.S. have experienced at least one event that could lead to childhood trauma.[9]About 72 percent of children in the U.S. will have experienced at least one traumatic event such as witnessing violence, experiencing abuse, or experiencing the loss of a loved one before the age of 18.[10]The majority of mental health needs first emerge during adolescence and are most effectively treated during this period.[11] The data suggests 1 in 5 youth will develop mental health difficulties eventually warranting a diagnosis, and 1 in 10 youth will be impacted by their mental health needs enough to require additional supports from schools.[12] These mental health concerns can have serious impacts on students as they progress through school, and it contributes to nearly half of the youth eventually dropping out.[13]

Up to 80 percent of youth in need of mental health services do not receive services in their communities because existing mental health services are inadequate.[14] Of those who do receive assistance, 70 percent to 80 percent of youth receive their mental health services in their schools.[15] Students are 21 times more likely to visit school-based health centers for mental health than community mental health centers.[16] This is especially true in low-income districts where other resources are scarce. Therefore, school-based mental health providers (SBMH providers)—such as school counselors, nurses, social workers, and psychologists—are frequently the first to see children who are sick, stressed, traumatized, act out, or hurt themselves or others. These SBMH providers are trained to address students' needs. Research has shown that school-based mental health providers improve school climate[17] and other positive outcomes for students.[18] Data shows that school staff who provide health and mental health services to our children not only improve the health outcomes for those students,[19] but also improve school safety.[20] Furthermore, schools that employ more SBMH providers see improved attendance rates, lower rates of suspension and other disciplinary incidents,[21] lower rates of expulsion,[22] improved academic achievement and career preparation,[23] and improved graduation rates.[24]

Police and Schools. On the other hand, no data indicates that police in schools improve either the students' mental health, educational outcomes, or their safety—indeed, in many cases they are causing harm.[25] When in schools, police do what they are trained to do—detain, handcuff, and arrest. This leads to greater student alienation and a poorer school climate. It also leads to greater and greater criminalization of our youth. There is no conclusive evidence to support that school policing measures actually make schools—or students—safer.[26] For example, a recent evaluation of the impact of North Carolina's state grant program for school resource officers (SROs) concluded that middle schools that used state grants to hire and train SROs did not report reductions in serious incidents like assaults, homicide, bomb threats, possession and use of alcohol and drugs, or the possession of weapons.[27] In fact, there is some evidence suggesting that these measures actually harm youth. Research has indicated that having school-based police contributes to less inclusive school climates, and this makes students less safe.[28] A 2018 study reviewing the impact of federal grants for school police on 2.5 million students in Texas found a 6 percent increase middle school discipline rates, a 2.5 percent

decrease in high school graduation rates, and a 4 percent decrease in college enrollment rates. Another 2018 study found more police in New York City neighborhoods hurt the test scores of Black male students.

The impacts of increased police presence in schools have been sweeping: a dramatic increase in contact with law enforcement, an expansion in the types of roles police play in schools, an increase in student referrals to police, an increase in student arrests, and accountability problems stemming from student-police contact. The presence of permanent school police shifts the focus from learning and supporting students to over-disciplining and criminalizing them. Students are removed from classes, subjected to physical restraint, interrogation, and other risks to their rights to education, due process,[29] and equal treatment. Data from the National Center for Education Statistics indicates that compared to police in schools with predominantly white students, police in schools with predominantly students of color are significantly more likely to have duties focused on maintaining school discipline while being less likely to coordinate with emergency teams and police in the presence of an actual threat.[30]

Law enforcement officers are often not prepared or qualified to work with children. Roughly 25 percent of school police surveyed by Education Week stated that they had no experience with youth before working in schools.[31] Police are trained to focus on law and order, not student social and emotional well-being. This lack of training and education undermines effective behavior management.[32] The tools of law enforcement, unlike the tools of SBMH providers, include pepper spray, handcuffs, tasers, and guns, and are ill-suited to the classroom. A 2018 report by the Advancement Project documented and mapped over 60 instances of police brutality in schools over the past eight years.[33]

Even when students report having a positive view of their school police, the officers are not perceived as contributing to keeping the school drug-free or improving school safety.[34] Law enforcement creates more hostile environments, and when students perceive their schools to be hostile, they are less likely to be engaged in school and, in turn, demonstrate reduced achievement.[35] The presence of sworn law enforcement is also associated with increases in student arrests for low-level incidents.[36] Schools employing school police see increases in student offenses and school-based arrests by as much as 400 percent.[37] In a recent survey of 400 SROs, one out of three officers reported that their school does not specify the types of disciplinary issues that they can intervene in.[38] This lack of accountability and clarity results in an inappropriate use of force for minor misbehaviors and harm to students.

The use of police in schools has its roots in the fear and animus of desegregation. Students of color are more likely to go to a school with a law enforcement officer, more likely to be referred to law enforcement, and more likely to be arrested at school. Research also demonstrates that students who attend schools with high percentages of Black students and students from low-income families are more likely to attend schools with tough security measures like metal detectors, random "contraband" sweeps, security guards, and security cameras, even when controlling for the level of serious misconduct in schools or violence in school neighborhoods. Students with disabilities are disproportionately arrested and physically harmed by school police as well.[39]

Although it was recently rescinded by the Trump administration, the Departments of Education and Justice issued guidance in 2014's "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," highlighting the fact that schools can be held responsible for school policing that furthers racial discrimination against students:

> *Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school safety measures and student discipline by relying on school resource officers, school district police officers,*

contract or private security companies, security guards or other contractors, or law enforcement personnel. To the contrary, the Departments may hold schools accountable for discriminatory actions taken by such parties.[40]

Despite the well-documented harm of school police and lack of evidence that policing measures make schools safer, the use of school police and similar measures has drastically increased over the past decades. In 1975, only one percent of schools were patrolled by police officers.[41]

Since then, that number has ballooned to encompass nearly half of all public schools (48 percent), according to the National Center for Education Statistics (NCES).[42] Historically, the growth in police being assigned to schools has been driven more by national media attention about school violence and the availability of grant funding (federal and state) than by an actual uptick in violent incidents in specific schools[43] or any evidence of the effectiveness of this approach.

Following the 1999 Columbine High School shooting, President Clinton called for the first round of Community Oriented Policing Services (COPS) grants as a response that would allow for school/police partnerships focused on "school crime, drug use, and discipline problems."[44] COPS is a unit of the U.S. Department of Justice.[45] After the Sandy Hook tragedy in 2012, President Obama allocated another $45 million[46] into COPS to fund additional school police.[47] Federal grants were supplemented by state grants and local monies to sustain SRO programs. The millions of dollars that have gone into school policing from COPS from 1995-2016 can be viewed in a time-lapse map in ACLU's 2017 report.[48] The report also explores the impact of school police on school discipline, student privacy rights, abuse of force, and more.

> "We must arm school counselors across the country with the appropriate counselor to student ratio (1 to 250). School counselors, social workers and school psychologists [are] all on the mental health frontlines."
>
> — ***Dr. Laura Hodges**, Nationally Certified School Counselor, in a statement to the Federal Commission on School Safety*[49]

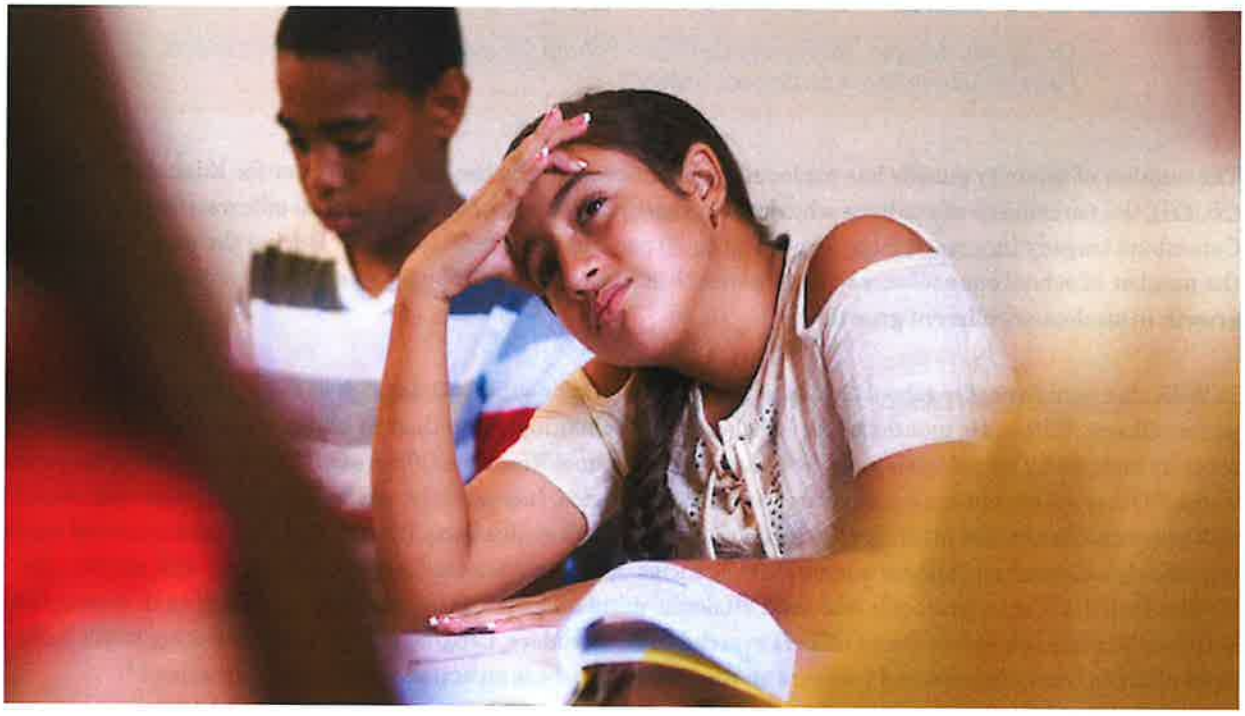
The number of security guards has exploded as well. According to the National Center for Education Statistics (NCES), the percentage of students who reported security guards or assigned police officers after the Columbine tragedy increased from 54 percent to 70 percent from 1999 to 2015.[50] During the same time period, the number of school counselors reported to the NCES only increased by 5 percent, after adjusting for the growth in student enrollment growth.[51]

In 2018, due to high-profile school shootings, there was another substantial uptick in the number of schools with police officers. Within six months of the Parkland school shooting, more than $1 billion was added to school security budgets by state legislatures, with funding for School Resource Officers (SROs)[52] being one of the largest items.[53] Other school hardening measures are also on the rise. Increasingly, students are subjected to open-ended risk assessments and are involuntarily held for mental health evaluations. Information they post on social media is routinely collected and shared among state agencies. Kindergarten teachers are coming up with memorable rhymes to drill security protocols into their students' minds. The youngest students are cowering in closets and bathrooms, while law enforcement officers pretend to be intruders, banging on doors, and shooting blank bullets in an effort to train students and teachers on what to do if there is an active assailant at their school.[54]

Report Overview. This report uses data from the 2015-16 academic year collected through the U.S. Department of Education's Civil Rights Data Collection (CRDC) to better understand access to school-based mental health (SBMH) services in relation to police in schools. The CRDC recently required every public school to report the number of social workers, nurses, and psychologists employed for the first time in history (reporting on school counselors had been previously reported).[55] This report provides the first state-level student-to-staff ratio analysis of SBMH personnel, as well as state-level reporting of law enforcement personnel. Furthermore, to examine the potential impact of school policing, the report analyzes school arrests and law enforcement referrals by state and by race and disability status. To better understand the harm, this report provides the first intersectional analysis of this data by race and gender.

A key finding of this report is that millions of students are being underserved and lack access to critical supports. These glaring deficits in mental health staff for students are inexcusable, especially in comparison to the number of reported law enforcement in schools. Students with unmet behavioral and mental health needs, combined with law enforcement with limited training and ill-defined roles has resulted in disastrous consequences. The analysis related to school policing measures also demonstrate glaring racial and disability-status disparities in school arrests and referrals to law enforcement. Specifically, the findings indicate that, indeed, this surge in police officers contributes to a biased application of discipline and over-criminalization of students of color and students with disabilities.

The report highlights that, now more than ever, school boards and administrators need guidance to navigate their responsibility to ensure each of their students are safe from discriminatory discipline, especially when they engage law enforcement. The report concludes with recommendations for improving student safety, well-being, opportunity to learn, and school climate, and ensuring that these measures work to prevent discrimination and eliminate the disproportionate impact of school policing on students of color and students with disabilities.



Mental Health and Law Enforcement Staffing in Public Schools

Mental Health Providers in Public Schools

School counselors, social workers, nurses, and psychologists each play a critical role in supporting youth and addressing barriers to school success. The specific roles of each of these school-based mental health providers (SBMH providers) are detailed in Table 1, both by the official federal designated definition[56] and by the more descriptive definition from the relevant provider associations.

TABLE 1

Definitions for School-Based Mental Health (SBMH) Providers

	FEDERAL DATA DEFINITION[57]	PROFESSIONAL DEFINTION[58]
SCHOOL COUNSELOR	Professional staff member assigned specific duties and school time for activities like counseling with students and parents, consulting with other staff, evaluating student abilities, and implementing guidance programs.	Providers who are typically the first SBMH providers to interact with students when they are struggling. School counselors not only have specialized knowledge in supporting students as they navigate the curriculum, but they also have training in establishing safe learning environments, monitoring and responding to behavior to improve school climates, and creating relationships between students, teachers, and parents that promote greater interpersonal connections.
SOCIAL WORKER	Certified, licensed, or otherwise qualified professional who provides social services and assistance to improve the social and psychological functioning of children and their families and to maximize the family well-being and the academic functioning of the children.	Provider that helps families and school staff navigate community systems to better support the students' needs. They assist with the various barriers such as poverty, inadequate healthcare, community violence, homelessness, domestic violence, and other issues that impact students and their performance in school. School social workers also facilitate innovative prevention and intervention programs in areas like substance abuse, bullying, anger management, and more.

PSYCHOLOGIST	Licensed professional who evaluates and analyzes students' behavior by measuring and interpreting their intellectual, emotional, and social development, and diagnosing their educational and personal problems.	Providers who are trained in both psychology and education with specialized knowledge in advocacy for children and specialized knowledge meant to address learning, motivation, behavior, mental health, social development, and childhood disabilities. They are also critical to ensure evidence-based assessments and interventions for students. A report by the National Association of School Psychologists (NASP) found that qualified school psychologists can help address issues such as "poverty, mental, and behavioral health issues, bullying, homelessness, increasing cultural and linguistic diversity."[59]
NURSE	Qualified health care professional who addresses the health needs of students. The provider meets the state standards and requirements for a nurse.	Provider who provides critical support to both physical and mental health. They help with behavioral screening and referrals to health care providers in the community. They also support treatment compliance where appropriate.

Note: Definitions are paraphrased from identified sources

Given the importance of these providers, experts and professional organizations provide recommended student-to-SBHM provider ratios. The American School Counselor Association recommends a ratio of 250 students per counselor.[60] The National Association of School Psychologists (NASP) recommends a ratio of 500-700 students per school psychologist, depending on the comprehensiveness of services being provided.[61] School Social Work Association of America (SSWAA) recommends that social work services should also be provided at a ratio of 250 students to one social worker.[62] Several states, along with the American Nurses Association, recommend a ratio of one school nurse to 750 students in healthy student populations.[63]

This report presents the analyses of the 2015-16 federal Civil Rights Data Collection (CRDC) data to generate student-to- SBMH provider ratios for the 93,641 public schools in the U.S. overall and by state.[64] Despite evidence that the presence of SBMH personnel improves school climate and reduces violence, most schools have significantly less staff than recommended by experts and professional organizations. The following maps (Maps A-D) display the student-to-provider ratios for each type of provider (counselor, psychologists, social workers, and nurses) nationally and by state. The states meeting the recommended ratios are in blue. States failing to meet the ratios are in red.

School Counselors

The American School Counselor Association recommends a ratio of 250 students per counselor.[65] Over 90 percent of students attend schools with higher ratios. The national student-to-counselor ratio was 444:1. This suggests counselors are seriously overworked with student caseloads 78 percent greater than what is recommended by experts.

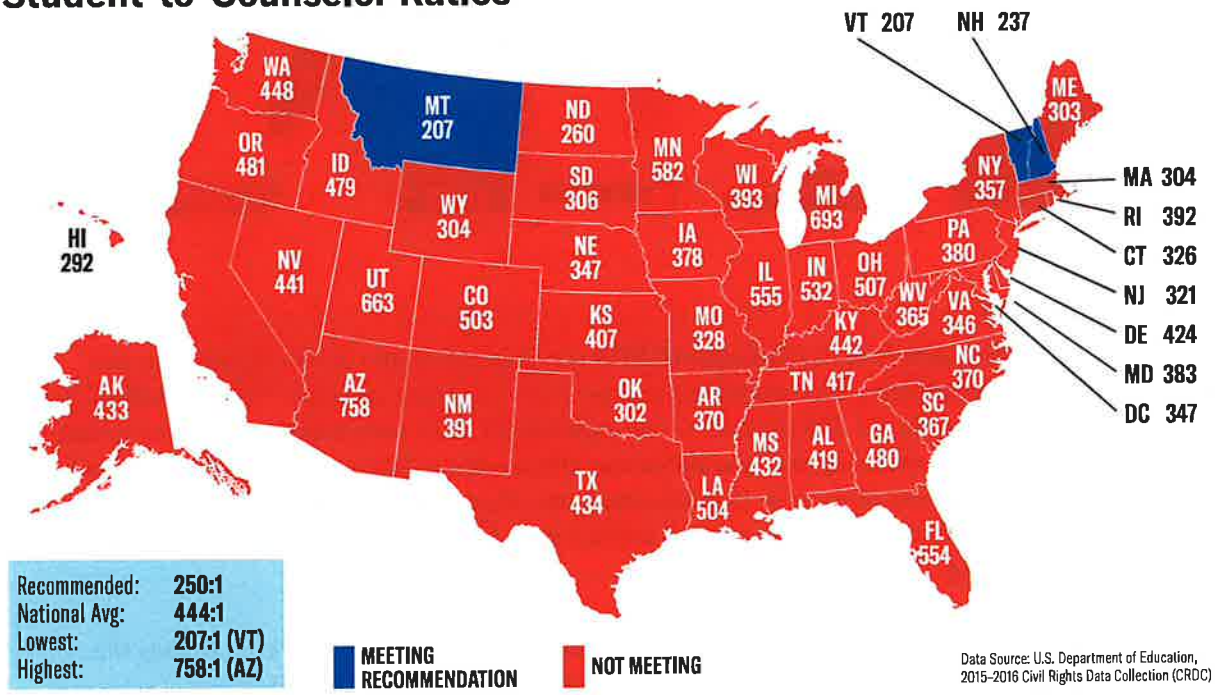
This crisis extends beyond unmet minimums. The U.S. Department of Education's 2016 First Look found

21 percent of high schools nationwide did not have access to any school counselor.[66] Our analysis of the most recent data reveals more than 24,000 schools (25 percent) reported having no counselor on staff (see Table A1 in Appendix).[67] Roughly 8.7 million students attend these schools. Although charter schools represent just 7 percent of public schools nationwide, they made up 15 percent of schools that reported no counselor.

As shown in Map A, the severity of the shortage of counselors varied largely by state. Montana and Vermont had the lowest student-to-counselor ratio and provided one counselor for every 207 students. Arizona (758-to-1), Michigan (693-to-1), and California (682-to-1) had the three highest counselor caseloads in the country. In California alone, 5.9 million of the state's 6.2 million students (96 percent) were in schools where counselor caseloads did not meet the 250:1 recommendation. The six New England states (Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut) had the highest percentage of students attending schools that met the recommended counselor ratio.

MAP A

Student-to-Counselor Ratios

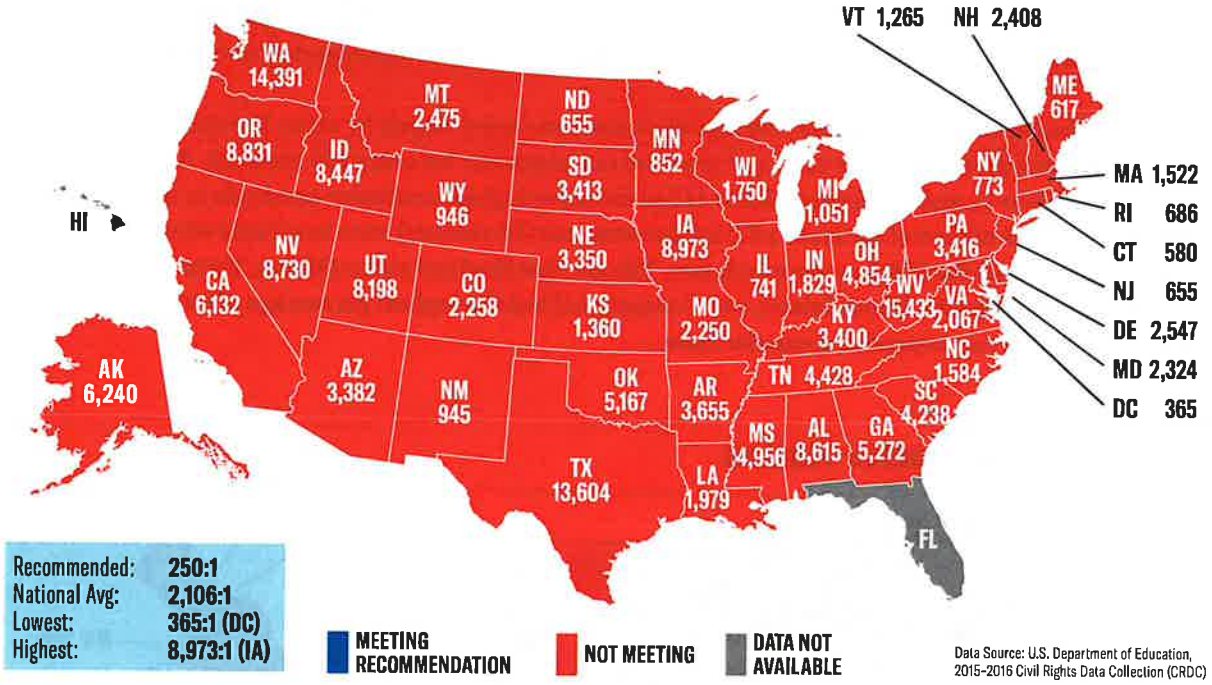


School Social Workers

According to the School Social Work Association of America, social work services should also be provided at a ratio of 250 students to one social worker.[68] Federal CRDC data reveals a ratio of 2,106 students to one social worker, creating a caseload for social workers nearly eight times greater than what is recommended by the experts. Map B shows the average student-to-social workers ratio by state. Less than 3 percent of schools nationwide, only about 3,000 schools, met the professional recommendation. More than 67,000 schools reported zero social workers serving their students.[69]

MAP B

Student-to-Social Worker Ratios



Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

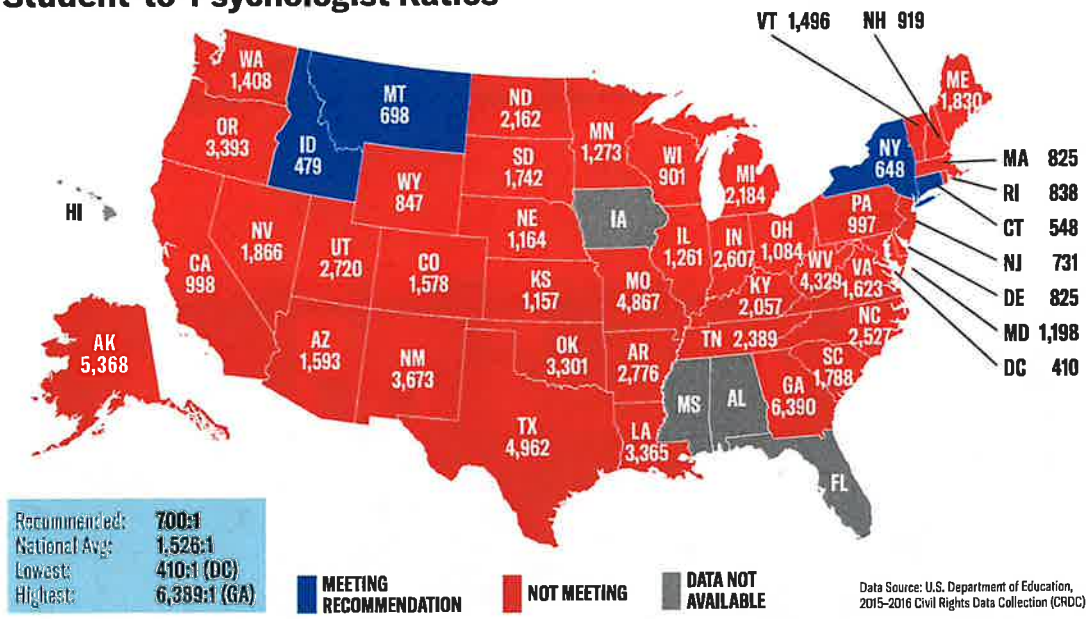
School Psychologists

The National Association of School Psychologists (NASP) recommends a ratio of 500-700 students per school psychologist, depending on the comprehensiveness of services being provided.[70] Yet, the federal data shows a national average ratio of 1,526 students to one psychologist. This ratio failed to meet the minimum recommended ratio of students to psychologist and is over 200 percent to 300 percent greater than what is recommended by the experts. More than 19 million students, 43 percent of public school students, were enrolled in a school that failed to have a school psychologist. Map C shows the average student-to-psychologist ratio by state.

This lack of school psychologists is extremely troubling given that school psychologists are usually the staff most qualified to assess a student's safety risk to themselves and others. A NASP survey of school psychologists in 24 states found an estimated student-to-school psychologists ratio of 1,408 to one. This deficit translates to 63,000 additional school psychologists needed to provide students with the full range of psychological services and supports students need.

MAP C

Student-to-Psychologist Ratios



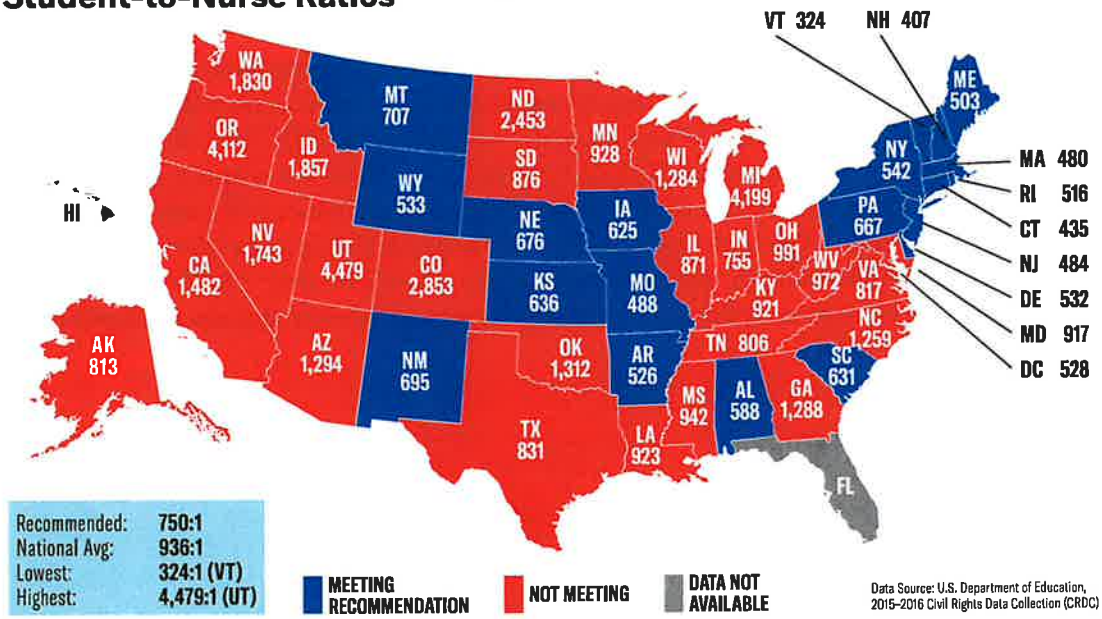
Data Source: U.S. Department of Education, 2015–2016 Civil Rights Data Collection (CRDC)

School Nurses

Several states, along with the American Nurses Association, recommend a ratio of one school nurse to 750 students in healthy student populations.[71] According to the federal data, the national average is 936 students to one nurse. More than 70 percent of the nation's students attended schools that did not meet the recommended ratio. Over 33 percent of schools did not report a nurse on staff—this impacted 14.5 million students. Map D shows the average student-to-nurse ratio by state.

MAP D

Student-to-Nurse Ratios



Data Source: U.S. Department of Education, 2015–2016 Civil Rights Data Collection (CRDC)

In every category of SBMH providers, there are substantial deficits in support staff that are critical to student success and health. Social workers in schools are largely absent altogether. Counselors are overworked with over 1,000 students at some schools. The ratio of students to school psychologists to students is two to three times the recommended number. These glaring deficits in support staff for students are inexcusable, especially in comparison to the number of reported law enforcement in schools.

Police in Public Schools

To better understand the prevalence of police in schools, particularly in relation to the level of mental health staff, this report presents the latest available CRDC data for sworn law enforcement at the federal and state level. Due to the U.S. Department of Education's "data anomaly" with the latest CRDC, both 2015-16 and 2013-14 data regarding sworn law enforcement are included (see Table 2).[72] There are several types of sworn law enforcement stationed in schools, the most prominent being school district police officers and "school resource officers" (or "SRO"). The term SRO is sometimes used to refer to anyone who works in a school, wears a law enforcement-like uniform, and is responsible for a school's security.[73] SROs differ from school safety officers, who are non-sworn civilians, typically with no arrest authority, that are employed by the local school.

TABLE 2

Federal Definitions For School Law Enforcement And Security Staff

SWORN LAW ENFORCEMENT OFFICER	Personnel with arrest authority, including school resource officers (SROs) employed by any entity. Duties include security, patrol, education, training, recording/reporting discipline, and more.
SECURITY GUARD	Individual who guards, patrols, and/or monitors the school premises to prevent theft, violence, and/or infraction of rules. A security guard may provide protection to individuals, and may operate x-ray and metal detector equipment. A security guard is not a sworn law enforcement officer.

Table 3 presents the raw numbers of law enforcement and security staff present in our nation's public schools—overall and by state. For comparison, the table also provides numbers of school-based mental health (SBMH) providers and teachers. As indicated, there were more sworn law enforcement officers (27,236) reported in our nation's schools than social workers (23,138). More than 4,800 schools actually reported more school police and security than overall SBMH providers. Many states reported two-to-three times as many police officers in schools than social workers. California, Illinois, and several other states reported more security guards than nurses.

Analysis of the CRDC school police data also shows the greatest number of students reporting police in schools were in D.C. and Tennessee, where 74 percent and 68 percent of schools reported law enforcement.[74] South Carolina, North Carolina, and Florida were third with 64 percent of schools reporting law enforcement. New York had the lowest with 17 percent of schools reporting any law enforcement in-part because of clear underreporting and failure of New York City Public Schools to report the number of law enforcement in schools. Other states also have deflated numbers because of underreporting. In California, many large districts failed to report the accurate number of school police. Los Angeles Unified School District, for example, reported less than 220 school police to the federal government in 2015-16 although an ACLU of Southern California report found at least 378 school police present.

TABLE 3

Raw Numbers of Support Staff, Police, and Security Guards by State

STATE	Students Enrolled	Counselors	Social Workers	Psychologists	Nurses	Teachers	Law Enforcement	Security Guards
NATION	**49,977,268**	**112,586**	**23,138**	**32,754**	**53,389**	**3,190,980**	**27,236**	**27,737**
AK	131,093	303	21	24	161	7,926	107	56
AL	744,506	1,779	86	26	1,265	46,578	668	176
AR	480,300	1,298	131	173	913	33,939	495	128
AZ	1,117,475	1,473	330	701	864	57,247	362	988
CA	6,217,689	9,123	1,014	6,233	4,196	279,695	2,080	4,228
CO	889,725	1,769	394	564	312	51,705	396	447
CT	531,922	1,630	916	971	1,223	44,284	261	812
DC	81,375	235	223	198	154	6,692	154	333
DE	136,411	322	54	165	257	9,380	68	47
FL	2,762,601	4,989	199	195	26	151,462	1,810	954
GA	1,745,762	3,640	331	273	1,355	111,692	1,228	210
HI	182,836	625	4	0	4	11,975	1	240
IA	499,264	1,321	56	35	798	35,414	152	73
ID	291,914	609	35	145	157	15,124	196	138
IL	2,005,522	3,610	2,707	1,591	2,302	134,991	950	2,882
IN	1,019,004	1,916	557	391	1,350	60,263	814	234
KS	486,050	1,196	357	420	765	35,011	292	126
KY	681,279	1,540	200	331	740	41,929	384	187
LA	716,071	1,421	362	213	776	48,763	571	233
MA	946,424	3,111	622	1,147	1,972	74,007	567	317
MD	893,472	2,335	385	745	974	63,448	503	285
ME	177,903	587	288	97	354	14,810	99	2
MI	1,509,170	2,178	1,436	691	359	81,121	507	724
MN	864,466	1,487	1,015	679	932	58,783	420	224
MO	915,033	2,789	407	188	1,874	66,554	751	323
MS	490,208	1,134	99	40	520	33,390	526	219
MT	148,087	715	60	212	209	11,519	136	19
NC	1,551,207	4,190	980	614	1,232	114,435	1,347	186
ND	110,022	423	168	51	45	9,439	76	40
NE	310,677	896	93	267	460	23,827	141	205
NH	181,916	767	76	198	447	14,933	133	19
NJ	1,358,709	4,231	2,076	1,859	2,808	118,344	689	2,619
NM	335,816	859	356	91	483	21,748	112	268
NV	465,312	1,054	53	249	267	25,436	114	215
NY	2,725,551	7,636	3,525	4,204	5,028	216,968	737	3,008
OH	1,719,439	3,390	354	1,586	1,735	106,288	860	747
OK	690,304	2,287	134	209	526	44,332	483	109
OR	566,070	1,176	64	167	138	28,582	238	107
PA	1,693,260	4,455	496	1,698	2,537	119,925	831	1,151
RI	141,210	360	206	168	273	11,606	71	17
SC	757,281	2,064	179	424	1,200	50,401	644	199
SD	137,100	448	40	79	157	10,022	102	21
TN	994,785	2,383	225	416	1,234	68,691	1,019	330
TX	5,256,939	12,106	386	1,059	6,326	347,403	2,912	2,047
UT	657,754	993	80	242	147	28,346	340	14
VA	1,279,045	3,701	619	788	1,566	91,281	856	929
VT	83,412	403	66	56	258	8,022	54	9
WA	1,079,724	2,410	75	767	590	56,290	273	334
WI	842,798	2,143	482	935	656	60,149	491	499
WV	278,716	764	18	64	287	19,056	138	49
WY	94,659	312	100	112	178	7,750	78	13

Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Based off the 2013-2014 CRDC data, the U.S. Department of Education (DOE) raised concerns about the 1.6 million students that were in schools with law enforcement and no counselors.[75] The most recent CRDC data analyzed here (from 2015-2016) indicate this gap still remains, and may even be widening. As Table 4 reveals, in 2015-2016, over 1.7 million students were found to be in schools with sworn law enforcement officers and no counselors. For illustrative purposes, Map E (see p. 22) provides a county-level comparison of the percentage of schools where there are school police and no counselors. There are many counties where more than 25 percent of schools have school police and no counselors

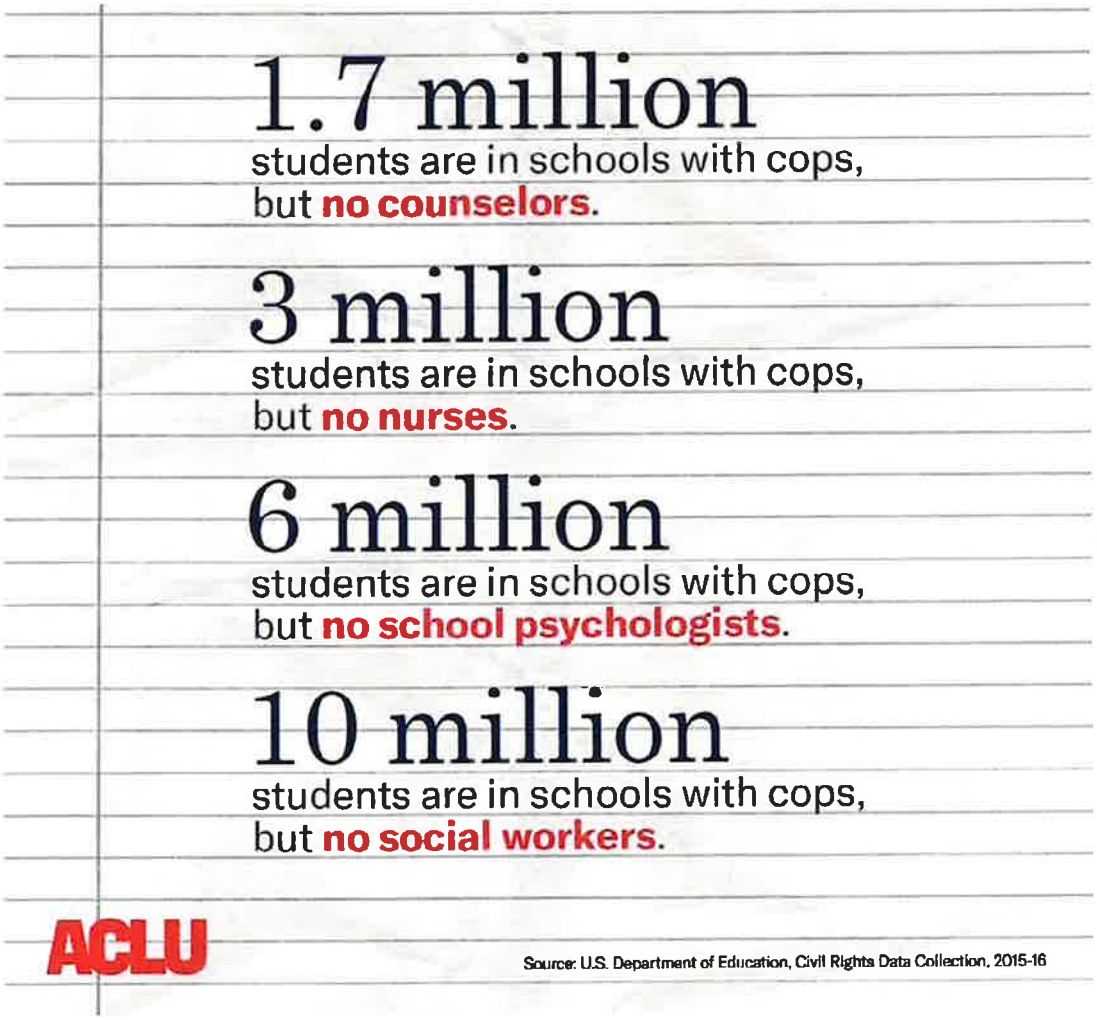


TABLE 4

School Police Compared to Psychologists, Nurses, Social Workers, and Counselors by State

STATE	% of Students in Schools Reporting Police	% of Students in Schools Reporting Police but no Counselor	% Students in Schools Reporting Police but no Psychologist, Nurse, Social Worker, and/or Counselor	Students Enrolled	# of Students in Schools Reporting Police	# of Students in Schools w/ Police but no Counselor	# of Students in Schools Reporting Police but no Psychologist, Nurse, Social Worker, and/or Counselor
NATION	43%	3.6%	31%	49,977,268	21,700,551	1,731,207	14,099,427
AK	41%	13.0%	39%	131,093	54,052	17,002	51,163
AL	52%	0.2%	51%*	744,506	388,364	1,224	385,627*
AR	63%	0.4%	54%	480,300	301,086	1,791	259,961
AZ	33%	7.7%	25%	1,117,475	365,027	86,501	275,811
CA	36%	6.3%	30%	6,217,689	2,229,646	390,072	1,873,624
CO	44%	3.0%	37%	889,725	390,596	27,131	328,458
CT	41%	7.3%	16%	531,922	215,668	38,906	82,584
DC	74%	25.1%	39%	81,375	60,230	20,457	32,018
DE	50%	5.5%	35%	136,411	68,803	7,536	47,921
FL	64%	3.8%	N/A	2,762,601	1,761,683	106,209	N/A
GA	57%	0.4%	44%	1,745,762	997,888	6,713	765,141
HI	N/A	N/A	N/A	182,836	N/A	N/A	N/A
IA	28%	0.8%	23%*	499,264	137,902	3,905	116,256*
ID	47%	3.0%	39%	291,914	137,792	8,742	112,821
IL	36%	5.6%	19%	2,005,522	714,375	111,336	388,004
IN	56%	10.5%	49%	1,019,004	573,867	106,653	499,445
KS	41%	2.1%	23%	486,050	201,139	10,231	113,021
KY	47%	2.3%	38%	681,279	317,586	15,406	261,112
LA	49%	6.6%	34%	716,071	347,832	47,528	240,441
MA	49%	5.4%	33%	946,424	466,769	51,515	312,529
MD	45%	4.3%	37%	893,472	403,111	38,232	326,383
ME	40%	1.2%	21%	177,903	70,893	2,205	38,225
MI	29%	7.3%	24%	1,509,170	433,840	110,534	353,950
MN	43%	9.2%	28%	864,466	372,734	79,361	245,687
MO	58%	0.4%	48%	915,033	534,729	3,314	439,297
MS	61%	5.3%	60%*	490,208	300,793	25,766	294,804*
MT	42%	0.4%	32%	148,087	61,470	558	47,385
NC	64%	0.5%	38%	1,551,207	988,453	8,247	593,972
ND	53%	0.3%	37%	110,022	57,799	280	40,461
NE	35%	1.3%	23%	310,677	107,992	3,938	71,128
NH	54%	0.0%	35%	181,916	98,893	0	64,455
NJ	33%	1.7%	9%	1,358,709	444,645	22,791	119,010
NM	25%	1.7%	15%	335,816	83,023	5,733	50,581
NV	36%	0.1%	21%	465,312	167,212	435	96,114
NY**	17%**	2.9%	9%**	2,725,551	466,297	78,794	236,917
OH	39%	4.5%	33%	1,719,439	677,244	76,972	563,720
OK	47%	0.9%	38%	690,304	321,739	6,411	265,741
OR	36%	5.7%	27%	566,070	204,523	32,193	152,140
PA**	33%**	0.8%	23%	1,693,260	560,134	13,151	385,592
RI	44%	2.8%	18%	141,210	62,179	3,937	25,459
SC	64%	0.6%	43%	757,281	488,129	4,805	323,264
SD	50%	1.9%	24%	137,100	68,881	2,670	32,812
TN	68%	1.0%	52%	994,785	677,149	9,666	513,163
TX	43%	0.9%	41%	5,256,939	2,281,971	48,595	2,178,659
UT	61%	10.7%	54%	657,754	403,958	70,267	352,077
VA	62%	0.2%	24%	1,279,045	787,336	3,194	303,779
VT	33%	0.1%	26%	83,412	27,677	118	22,092
WA	29%	0.7%	27%	1,079,724	309,579	8,010	295,299
WI	44%	0.9%	23%	842,798	367,245	7,951	195,374
WV	32%	0.3%	30%	278,716	89,318	789	83,696
WY	54%	3.6%	31%	94,659	51,030	3,434	28,941

*Indicates data that appear to be underreported or inaccurate.
PINK SHADING = Higher than the average for all states.
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

STATE SPOTLIGHT

Nebraska

Rose Godinez and Scout Richters, ACLU of Nebraska

In December 2018, the ACLU of Nebraska published a report titled "From the Classroom to the Courtroom: A Review of Nebraska's School Police Programs." Below is a summary of that report:

In recent years, school safety concerns have led more and more schools to implement or expand programs that establish a permanent police presence in our schools. This national trend is mirrored in the Nebraska state experience. While perhaps well-intentioned, this trend risks significant negative consequences for the civil rights and civil liberties of all students but particularly youth of color, youth with disabilities, immigrant youth, and youth who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ). School police programs have a significant disproportionate impact on diverse communities.

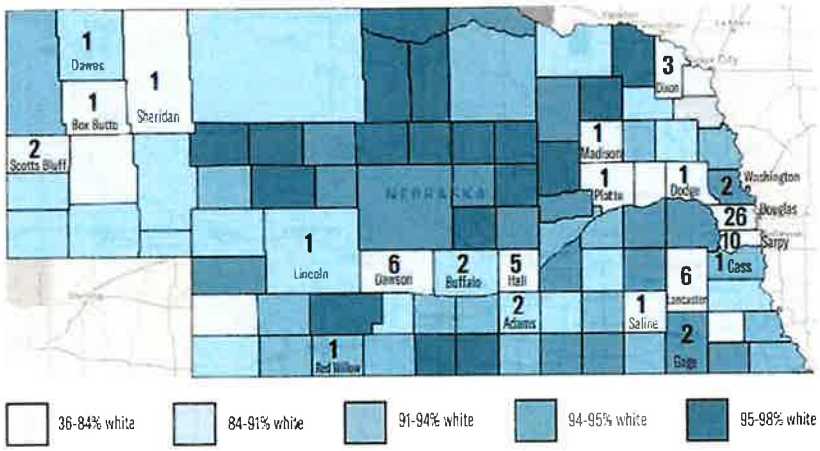
An increased police presence in schools leads to more system involvement via juvenile or criminal court. The same misconduct that would previously land a student in the principal's office may today land them in front of a judge and come with lifelong collateral consequences negatively impacting their educational opportunities, job prospects, housing, voting rights, and ability to receive public benefits.

The ACLU does not support a permanent police presence in schools. However, we recognize the growing trend of establishing or expanding school police programs in Nebraska and undertook an extensive research project to gain a more complete understanding of the policies and practices guiding these programs among the public-school districts and law enforcement agencies. In the summer and fall of 2018, the ACLU utilized two extensive rounds of open records requests, conducted extensive legal and policy research, conducted a story banking project, and published a report in December 2018 to learn more about how these programs currently operate and whether they are meeting established best practices to safeguard the civil rights and civil liberties of our students.

School Police Officers in Nebraska

The map on the right reflects the number of school police officers by county, as reported by school districts within those counties in response to our June 2018 open records requests. The color scale reflects the racial diversity within Nebraska counties using the most recent U.S. Census data for the state.

As depicted in the map, racially diverse counties tend to have more school police than counties that are predominantly white. In fact, counties that are 94 percent or more white account for only 4 of 76 (5 percent) of school police officers in the state.



Below are a few key findings from the report:

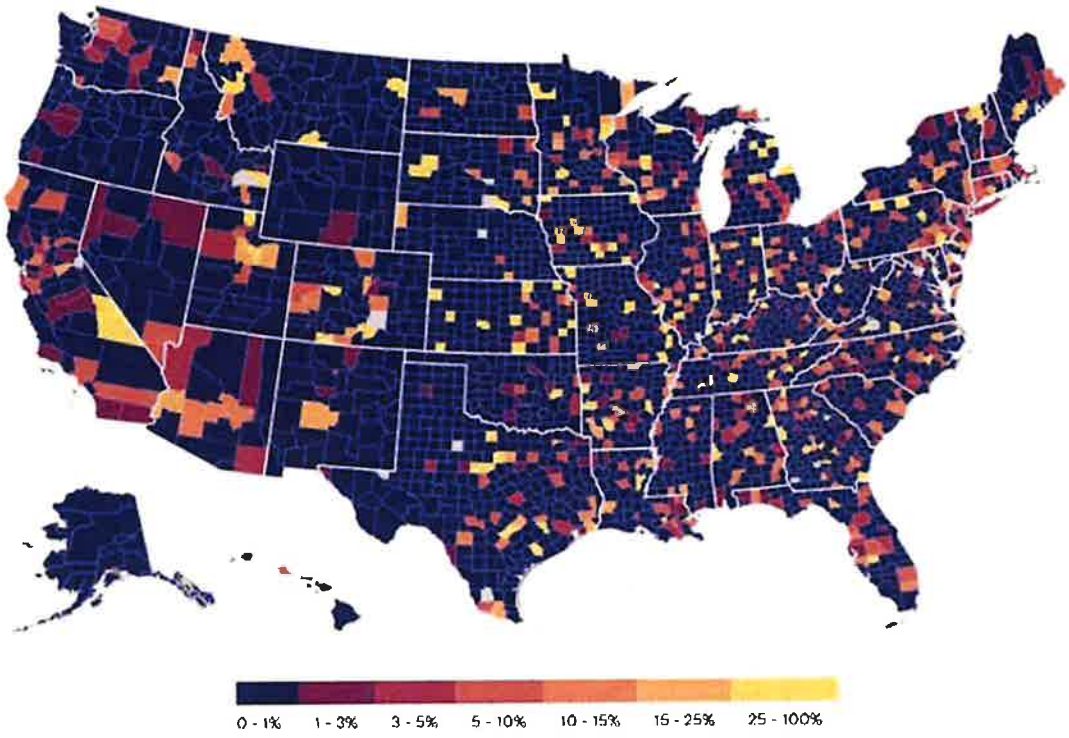
- There is no standard state-based data collection to track the reasons students are referred to law enforcement disaggregated by demographic information of the student like race, gender, LGBTQ status, English Language Learner (ELL) status, and disability status. Only a small number of school districts and only some law enforcement agencies track this information.
- For school districts and law enforcement agencies that do track reasons for referrals, the vast majority fail to provide critical details to contextualize the incident and do not document the referral outcome.
- From the limited data that could be gathered on reasons students are referred to school police, the reasons most often cited were: 1.) assault, 2.) drug-related offenses, and 3.) disturbance. Additionally, high school students made up nearly half of all the referrals from K-12 schools that documented referral reasons.
- There are no standard provisions that must be part of a Memorandum of Understanding (MOU) or similar agreement between a school district and a law enforcement agency governing school police programs. Many MOUs governing Nebraska school police programs lack critical provisions to safeguard students' rights.
- There is no standard, minimum, or specific training requirements for school police in Nebraska public schools, even though the majority of law enforcement agencies that contract with school districts have their school police participate in some youth-centered specialized training.

To learn more about school safety in Nebraska and what the ACLU is doing to protect student rights, visit https://www.aclunebraska.org/en/issues/youth-and-schools.

MAP E

County-Level Map of Percentage of Students in Schools Reporting Police and No Counselors

Data Source: U.S. Department of Education, 2015–2016 Civil Rights Data Collection (CRDC)



Access interactive map at www.aclu.org/schooldiscipline along with state and county-level staffing ratios.

Given the 2015-2016 CRDC data also reported on number of psychologist, nurse, and/or social worker, in addition to counselors, Table 4 also highlights the percent and number of students in schools with police but no psychologist, nurse, and/or social worker. Overall, nearly a third of our nation's students attended schools that reported having a law enforcement officer onsite while lacking any SBMH provider (i.e., counselor, nurse, psychologist, or social worker).[76] That adds up to tens of thousands of schools that are not equipped to meet the social, emotional, or behavioral needs of students. There were 14 million students enrolled in these schools (not counting students in Florida and Hawaii schools, as these two states that clearly failed to report accurate staffing data—see Appendix B).

In Arkansas, Utah, and Tennessee, more than half of schools reported police but no counselor, psychologist, nurse, and/or social worker. New Hampshire was the only state that had counselors in every school that had police, while over 25 percent of students enrolled in the District of Columbia were in schools reporting police and no counselors. Some state bore a disproportionate brunt of this mental-health-to-police disparity in their schools. For example, California enrolled 23 percent, or 390,000, of the nation's students in schools with police but no counselors.

School Arrests, Offenses, and Law Enforcement Referrals

Arrests and Referrals to Law Enforcement

According to this federal CRDC data, there were over 230,000 referrals to law enforcement[77] and 61,000 school arrests[78] in the 2015-2016 school year. The actual number is likely significantly higher due to the clear underreporting in some districts and states, which is discussed in detail in Appendix B, resulting in some states possibly having school arrest rates over three times higher than reported in this analysis of federal data. For example, the Florida Department of Juvenile Justice reported 7,341 school-related arrests in 2015-16, while the state reported only 1,919 school-related arrests to the U.S. Department of Education's CRDC.[79] Unfortunately, the federal government does not require schools to report the reasons students are arrested. However, previous research and state-reported data indicate that many school arrests arise from criminalizing common adolescent behaviors. For example, students have been charged for "disorderly conduct" for cursing, for "drug possession" for carrying a maple leaf, and for "disrupting school" by fake burping. A list of over 25 common adolescent behaviors that students have been arrested for can be found in our 2017 report and detailed in Appendix C.

State data from Florida also provides a useful case study for these purposes, as it is one of the only states that collects detailed youth arrest data. Over 60 percent of school arrests were for misdemeanors. Disorderly conduct was the second most charge for school arrest, and misdemeanor assault/battery (school fights) were the most common offense. Furthermore, data demonstrates a marked racial disparity when such types of misbehavior are the rationale for arrest. Disorderly conduct was the most common reason Black and Latina female students were arrested in Florida public schools. Black girls made up 22 percent of Florida's total female student population, but 74 percent of the female students arrested for disorderly conduct. In contrast, white male students were most often arrested for drug-related offenses.

The harm and underreporting of referrals to law enforcement should not be taken lightly. Although the Department of Education defines "referrals to law enforcement" to include school-related arrests, several schools and districts reported hundreds of arrests, yet zero referrals to law enforcement. These referrals or the issuance of citations and tickets for minor infractions still result in records that could be discovered by potential employers, colleges, and immigration authorities. For example, in Pennsylvania, low-level offenses such as harassment, disorderly conduct, and possession of alcohol may result in a juvenile receiving a summary citation. In this scenario, the student is not arrested but receives a ticket from a police officer compelling an appearance before a judge in adult court to respond to charges. While these citations may seem like a minor traffic ticket, they can carry long-term consequences for young people.[80]

Our analysis of the federal CRDC data found that schools reporting police had an arrest rate of 2 per 10,000 students. This was 3.5 times the rate at schools where police were not present (6 per 10,000). In some states, the disparity in arrests between schools with and without police was even higher. For example, in Delaware, students attending schools with police were arrested at a rate of 72 arrests per 10,000, eight times the arrest rate for students attending schools without police (9 per 10,000). Although these data are cross-sectional and no causal analyses can be conducted, other reports have also found an increase in school police to be

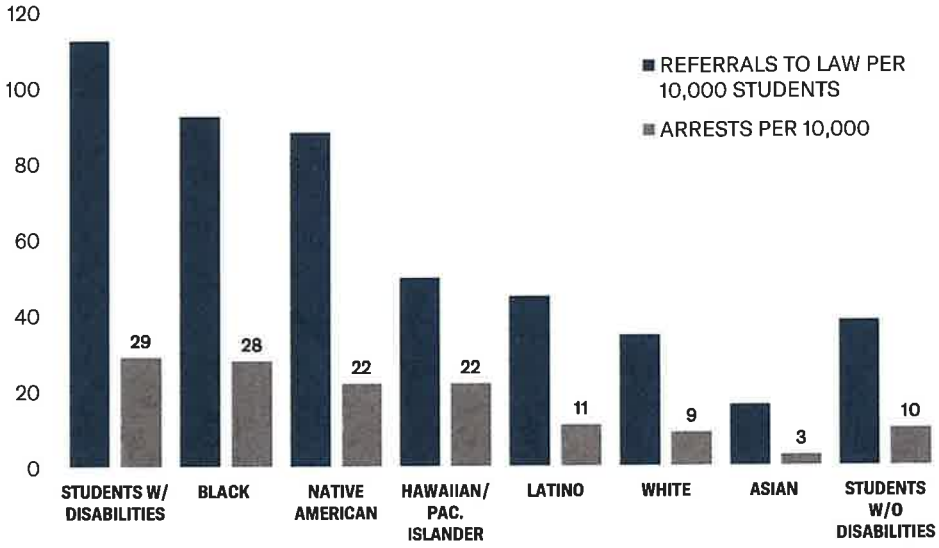
associated with school arrest. Schools that prioritize police over school-based mental health professionals create environments where typical adolescent behavior is criminalized. Having law enforcement on campus is a key contributor to this school-to-prison pipeline. The likelihood of a student dropping out of school increases significantly every time they touch the criminal justice system.[81]

Racial and Disability Status Disparities

The federal data highlights the disproportionate harm that school police have on students of color (specifically, Black, Native American, Hawaiian/Pacific Islander and Latinx students) and students with disabilities. As Chart 1 depicts, students with disabilities were arrested at a rate of 29 per 10,000 students, nearly three times higher than their non-disabled peers. Black students had an arrest rate of 28 per 10,000, which was three times that of white students. Native American and Pacific Island/Native Hawaiian students both had arrest rates of 22 per 10,000, more than twice the arrest rate of white students. Nationally, Latinx students were arrested at a rate 1.3 times that of white students (11 per 10,000 compared to 9 per 10,000).

CHART 1

School Arrests and Referrals to Law Enforcement per 10,000 Students by Race and Disability



Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Table 5 provides state-level rates for school arrests for students overall and for students of color and students with disabilities, nationally and by state. As the data demonstrates, several states had school arrest rates multiple times higher than the national average. Overall, students were arrested at a rate of 12 per 10,000 nationwide, but several states had rates higher than 50 or 100 per 10,000 when it came to students with disabilities and Black students. The extent of Latinx/white disparities also varied by state. For example, Latinx students were 3.5 times as likely to be arrested than white students in Rhode Island and more than twice as likely to be arrested in Pennsylvania and Connecticut.

Analyses of risk ratios for students of color and with disabilities by state reveal some states had disparities that even exceed the national average (see Table A4 in Appendix C). For example, in Maryland, students with disabilities had arrest rates that were 10 times as high as their non-disabled peers. Hawaii's students with disabilities had arrest rates 9 times that of their non-disabled peers. Iowa had an arrest rate 7 times that of their non-disabled peers, while Georgia and Connecticut had arrest rates more than 6 times that of their non-disabled peers.

Overall, students with disabilities were nearly 3 times more likely to be arrested than students *without* disabilities, and the risk multiplied at schools with police. While schools without police had an average arrest rate for students with disabilities of 17 per 10,000 students, schools with police had an average arrest rate for these students more than three times as high, at 51 per 10,000 students. Furthermore, students with disabilities were 12 percent of students but were 28 percent of students arrested at school in the 2015-16 school year (see Table A5 in Appendix C). The table also highlights the arrests and referrals composition index[82] for students by race across all 50 states and D.C. Native American students, for example, are only 1 percent of students and 2 percent of arrests nationally, but in states like South Dakota, they are 1 percent of students and 46 percent of student arrests.

For many students, the consequence of a traditional school arrest varies little from a referral to law enforcement. Both can have lifetime consequences for students, and both contribute to the historic inequalities faced by students of color and students with disabilities. Examination of rates of school referrals of law enforcement finds similar disparities based on race and disability states (see Table 6). As the data demonstrates, several states had school referral rates multiple times higher than the national average.

STATE SPOTLIGHT

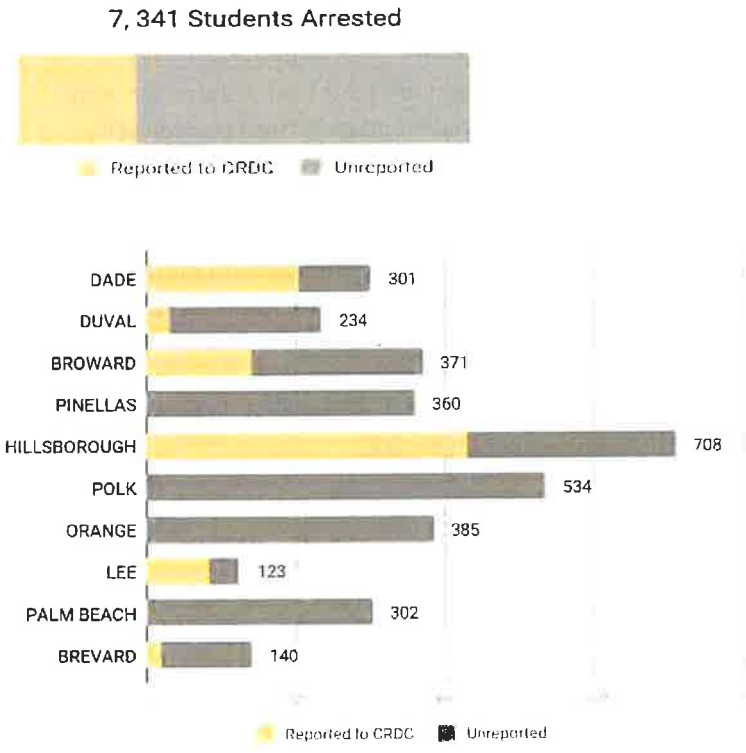
Florida

By Michelle Morton, ACLU of Florida

Along with significant discrepancies in reporting staffing, Florida is failing to accurately report student arrest data. The CRDC and the Florida Department of Juvenile Justice (FLDJJ) are measuring the same metric—school-related arrests—but are reaching very different numbers.[141] Both reports claim to include arrests of students for offenses happening on school grounds, on school transportation, and during off-campus school events. The FLDJJ does not include other offenses, such as violations of probation or court related charges, and theoretically may not include every referral by a school official (if the offense happened at an off-campus, non-school function).

Yet, Florida reported just 26 percent of the total number of students arrested in 2015-16 to the CRDC—only 1,919 students compared to the 7,341 students reported to be arrested for school-related offenses by the FLDJJ.

This discrepancy must be addressed to ensure Florida is accurately represented on the national level, especially given recent policy changes requiring armed staff or law enforcement in every school. Such a police presence in school is unprecedented and must be monitored closely for its impact on young lives



Florida Turns to Police for School Discipline

A gun in every school

In 2018, Florida became the first state in the nation to require armed staff or law enforcement officers to be present at every public K-12 school in the state. This legislation was a hasty reaction to the school shooting at Marjory Stoneman Douglas High School in Parkland, Fla., where 17 students and faculty lost their lives. This reactionary policy is not supported by evidence that the presence of armed officers—or armed civilians—is effective at preventing school attacks. Predictably, school arrests have increased since this policy was adopted, despite the fact that community youth arrest rates in the state continue to fall.

Along with the new school policing policy and increased funding and directives for school hardening measures, the law established a statewide anonymous threat reporting mobile app and an integrated data system and increased the sharing of student data, even when confidential, among state actors. Although not authorized by the law, the state's Department of Education is also purchasing a statewide social media monitoring tool that would feed into the integrated data system. Although the law made steps toward expanding access to care for students with unmet mental health needs, as a whole, it shifted the state's approach to school safety back toward treating students as suspects and took unprecedented steps toward undermining student civil rights.

Initial recommendations from a school safety commission established by the act present further risks to student civil rights and school climate. While the Marjory Stoneman Douglas School Safety Commission is recommending evidence-based supports—such as increased student mental health supports, clear roles for school police, and required minimal training for school police—it is also calling for unprecedented invasions on student privacy. Such problematic recommendations include that law enforcement be given unfettered, real-time access to surveillance cameras and expanded access to student records; that mental health providers be required to report any threats and share confidential information; that the state require more student offenses be referred to law enforcement; and that all students with individualized education plans (IEPs) for severe behavioral issues be subjected to threat assessments. Such measures are certain to erode student trust and school climate and worsen student outcomes.

To learn more about school safety in Florida and what the ACLU of Florida is doing to protect student rights, visit www.aclufl.org/school-safety-advocacy-toolkit.

TABLE 5

School Arrests by Race and Disability Status by State per 10,000

STATE	Students Enrolled	Arrests Total	All Students	Students with Disabilities	Black	Native American	Pac. Islander	Latino	White	Asian	Students without Disabilities
NATION	49,977,268	61,812	12	29	28	22	22	11	9	3	10
AK	131,093	4	0	0	0	1	0	0	0	0	24
AL	744,506	1,077	14	34	27	20	0	10	8	5	6
AR	480,300	751	16	31	27	11	38	23	10	3	10
AZ	1,117,475	1,640	15	33	29	35	9	16	10	2	10
CA	6,217,689	3,411	5	14	18	13	8	5	4	2	10
CO	889,725	347	4	6	11	11	15	5	3	1	10
CT	531,922	1,750	33	100	71	42	0	53	18	9	15
DC	81,375	169	21	48	27	0	0	10	0	0	18
DE	136,411	465	34	65	54	0	0	26	25	8	14
FL	2,762,601	1,919	7	16	14	15	7	5	5	1	10
GA	1,745,762	3,980	23	51	36	31	23	17	14	6	8
HI	182,836	672	37	108	39	61	57	28	33	24	12
IA	499,264	1,230	25	57	125	51	80	22	31	13	8
ID	291,914	138	5	13	6	20	0	5	4	0	5
IL	2,005,522	3,605	18	47	42	29	13	17	11	5	8
IN	1,019,004	1,850	18	40	38	47	19	14	22	3	7
KS	486,050	521	11	27	29	21	15	9	8	1	17
KY	681,279	451	7	16	24	16	0	4	5	0	9
LA	716,071	1,143	16	25	26	15	0	12	7	3	11
MA	946,424	343	4	8	8	0	0	9	3	1	8
MD	893,472	2,136	24	65	39	38	23	14	16	2	6
ME	177,903	56	3	6	0	0	0	0	3	7	10
MI	1,509,170	699	5	10	12	5	9	6	3	1	11
MN	864,466	1,195	14	31	35	38	0	16	15	1	12
MO	915,033	1,487	16	39	45	18	15	9	12	6	13
MS	490,208	793	16	32	21	0	0	12	12	4	13
MT	148,087	326	22	49	13	80	40	18	14	0	11
NC	1,551,207	604	4	11	9	2	0	3	2	0	12
ND	110,022	200	18	59	50	48	47	29	11	10	14
NE	310,677	205	7	14	11	34	0	8	5	0	10
NH	181,916	220	12	22	54	29	0	6	12	7	7
NJ	1,358,709	1,379	10	24	24	8	0	12	6	2	9
NM	335,816	188	6	8	3	11	0	5	6	0	13
NV	465,312	1,194	26	67	50	84	40	23	23	9	17
NY	2,725,551	849	3	7	6	4	0	2	4	0	9
OH	1,719,439	967	6	13	12	0	0	6	4	2	12
OK	690,304	1,054	15	28	39	17	26	9	13	7	15
OR	566,070	201	4	7	3	2	4	4	4	1	12
PA	1,693,260	5,647	33	81	81	43	21	51	21	8	14
RI	141,210	231	16	35	46	126	0	24	7	0	8
SC	757,281	2,046	27	51	46	13	15	11	16	5	11
SD	137,100	270	20	54	5	80	0	25	10	0	11
TN	994,785	1,464	15	28	27	8	28	10	11	3	5
TX	5,256,939	8,920	17	49	38	14	13	18	8	3	7
UT	657,754	137	2	4	6	3	0	3	2	0	12
VA	1,279,045	536	4	10	7	0	0	5	3	0	15
VT	83,412	61	7	20	38	0	0	0	7	0	10
WA	1,079,724	1,125	10	25	5	16	3	17	10	0	11
WI	842,798	1,991	24	57	78	42	17	20	18	6	15
WV	278,716	109	4	8	22	0	0	4	3	0	11
WY	94,659	56	6	7	0	32	0	5	4	0	23

*Indicates data that appear to be underreported or inaccurate. PINK SHADING = Top ten states
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

TABLE 6

Law Enforcement Referral by Race and Disability Status by State per 10,000

STATE	Students Enrolled	Referrals to Law Enforcement	All Students	Students w/ Disabilities	Black	Latino	Native American	Pacific Islander	White	Asian	Students w/o Disabilities
NATION	49,977,268	235,483	47	113	93	45	88	50	35	16	38
AK	131,093	454	35	60	52	30	65	33	23	13	88
AL	744,506	2,191	29	63	47	17	30	18	21	11	25
AR	480,300	1,511	31	60	53	36	46	43	24	5	41
AZ	1,117,475	4,867	44	89	78	47	112	41	29	19	43
CA	6,217,689	28,313	46	117	130	47	71	63	32	16	37
CO	889,725	5,182	58	98	134	69	95	23	45	30	38
CT	531,922	2,493	47	131	97	68	63	24	28	19	45
DC	81,375	218	27	59	36	10	0	0	0	0	71
DE	136,411	1,700	125	266	208	109	249	37	80	52	58
FL	2,762,601	21,208	77	168	137	53	137	66	61	31	33
GA	1,745,762	6,720	38	84	58	26	64	53	26	10	29
HI	182,836	761	42	128	44	32	61	66	38	25	47
IA	499,264	2,779	56	127	205	53	80	58	45	30	35
ID	291,914	952	33	89	54	45	125	80	27	10	24
IL	2,005,522	9,000	45	107	95	52	80	20	26	16	35
IN	1,019,004	2,926	29	64	49	22	41	19	26	4	33
KS	486,050	2,245	46	108	142	43	86	15	36	23	47
KY	681,279	1,809	27	108	63	29	31	0	21	9	44
LA	716,071	1,657	23	63	34	17	41	0	14	3	40
MA	946,424	1,513	16	34	26	29	7	14	12	7	28
MD	893,472	4,610	52	129	84	52	96	46	27	10	27
ME	177,903	833	47	99	53	55	28	0	47	28	54
MI	1,509,170	3,652	24	57	37	25	70	9	21	7	49
MN	864,466	6,128	71	195	206	83	177	33	43	29	39
MO	915,033	5,355	59	125	119	48	86	29	46	13	63
MS	490,208	1,392	28	52	36	15	14	0	22	4	46
MT	148,087	1,121	76	205	197	77	183	40	58	46	69
NC	1,551,207	6,786	44	119	78	42	32	37	26	18	42
ND	110,022	609	55	138	92	88	121	93	45	21	75
NE	310,677	1,502	48	106	95	58	130	0	39	22	36
NH	181,916	1,464	80	147	176	51	116	74	84	24	42
NJ	1,358,709	3,511	26	59	53	29	16	5	18	7	38
NM	335,816	1,291	38	65	35	27	118	61	35	19	34
NV	465,312	2,728	59	142	131	46	177	67	55	16	40
NY	2,725,551	8,218	30	68	64	30	40	5	22	9	39
OH	1,719,439	3,518	20	46	34	19	6	17	17	11	41
OK	690,304	3,806	55	99	114	40	53	138	50	31	52
OR	566,070	1,320	23	49	28	25	77	27	22	5	38
PA	1,693,260	21,860	129	278	342	194	151	63	72	55	47
RI	141,210	974	69	113	189	136	450	0	21	9	40
SC	757,281	3,192	42	90	67	18	46	45	30	15	42
SD	137,100	1,069	78	188	201	116	201	0	51	41	63
TN	994,785	3,856	39	65	49	34	17	97	36	24	29
TX	5,256,939	16,514	31	89	60	33	37	22	19	6	27
UT	657,754	2,222	34	71	99	55	85	46	27	19	27
VA	1,279,045	16,123	126	313	235	102	142	46	93	32	50
VT	83,412	295	35	99	123	41	0	0	33	31	48
WA	1,079,724	2,870	27	69	63	36	51	34	21	11	42
WI	842,798	8,435	100	276	254	96	238	51	78	40	58
WV	278,716	731	26	39	50	26	0	0	25	0	65
WY	94,659	999	106	208	200	107	166	78	100	90	75

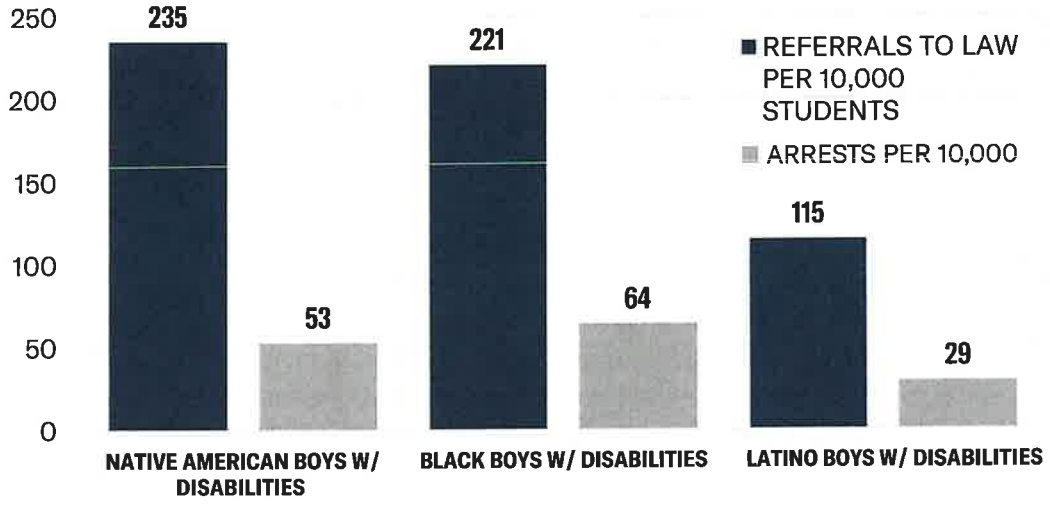
PINK SHADING = Higher than the average for all states.
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Focus on the Intersectionality of Race, Gender, and Disability in Student Criminalization

The inequalities in school arrests intensify when the data are disaggregated even further. Specifically, when considering not only race and disability status, but also the role of gender, we find that Black boys with disabilities suffered the highest arrest rate, with 5 times the rate for all students (see Chart 2). In nine states, their arrest rate was 10 or more times higher than the national rate for all students (see Table 7). Latino boys with disabilities also had school arrest rates 10 times higher than the rates for all students in three different states. Black and Latino boys with disabilities were only 3 percent of student enrollment nationally, but they comprised 12 percent of all student arrests (see Table A5 in Appendix C).

CHART 2

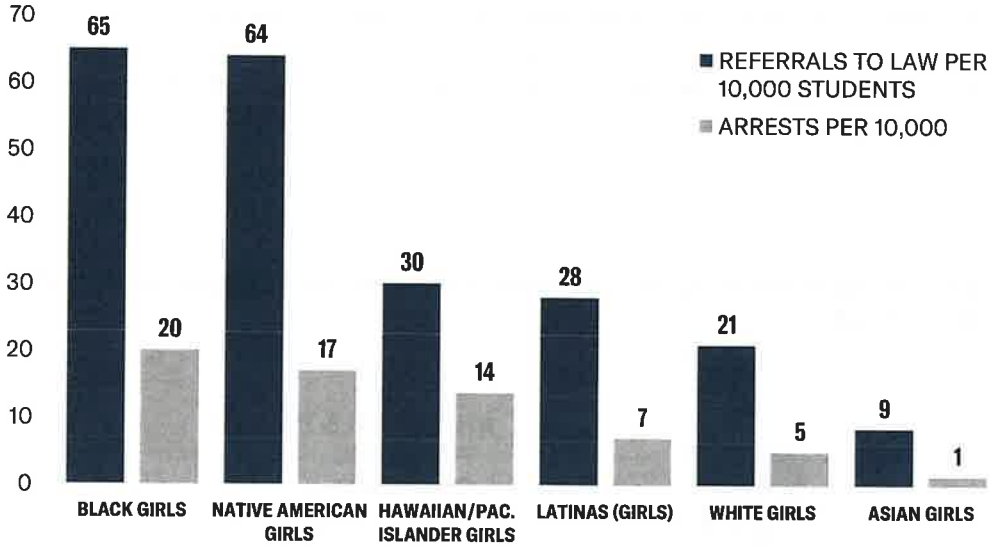
School Arrests and Referrals to Law Enforcement per 10,000 Students for Boys of Color with Disability



Black boys with disabilities faced highest overall arrest rates when considering race, gender, and disability status. However, Black girls in general experienced school arrests the most disproportionately. Overall, Black girls had an arrest rate five times that of white girls (see Chart 3 and Table 8). Furthermore, Black girls were 16 percent of girls nationally, but were 39 percent of girls arrested in school. Black girls were at least half of female school arrests in 11 different states (see Table A6 in Appendix C). For example, in Georgia, Black girls were 37 percent of female students, yet 63 percent of all female student arrests. In states like North Carolina, Iowa, and Michigan, Black girls were over 8 times as likely to be arrested than white girls (see Map F).

CHART 3

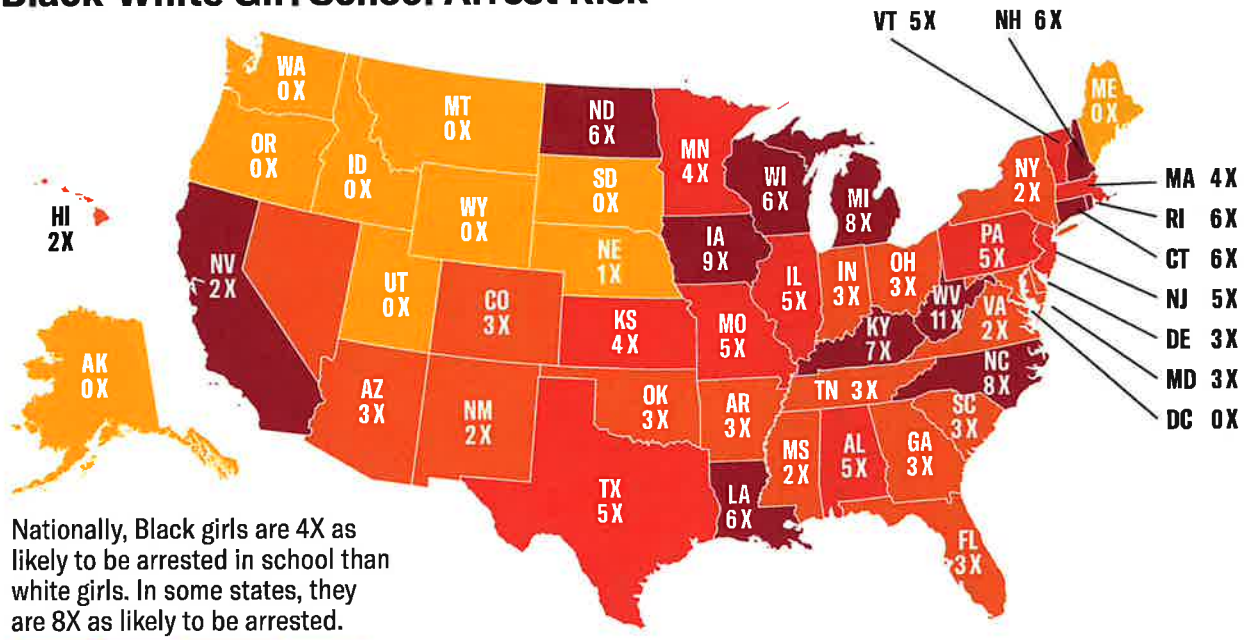
School Arrests and Referrals to Law Enforcement per 10,000 Students for Girls



Native American girls and Latinas also experienced a disproportional number of school arrests in many states (see Table 8). Overall, Native American girls had a school arrest rate of three and a half times that of white girls. In some states this disparity was even greater–for example, in Montana, Native girls were 12 percent of female students, but 62 percent of female student arrests (see Table A6 in Appendix C). Latina girls also faced disproportionate school arrests–with an arrest rate 1.5 times that of white girls (see Chart 3). In some states, they faced even greater disparities (see also Table A6 in Appendix C), such as in Massachusetts where Latinas made up 48 percent of the female students arrested, despite only being 18 percent of the female students enrolled.

MAP F

Black-White Girl School Arrest Risk



Nationally, Black girls are 4X as likely to be arrested in school than white girls. In some states, they are 8X as likely to be arrested.

0X 6X

Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

TABLE 7

School Arrests for Boys of Color with Disabilities per 10,000

	Black Boy SWD Arrests per 10,000 Students	Latino Boy SWD Arrests per 10,000 Students	Native American Boys SWD Arrests per 10,000
NATION	64	29	53
AK	0	0	0
AL	70	26	0
AR	54	77	0
AZ	92	34	82
CA	46	13	39
CO	27	5	0
CT	195	171	0
DC	59	20	0
DE	107	59	0
FL	32	17	91
GA	80	50	0
HI	0	111	0
IA	279	64	233
ID	200	21	0
IL	98	42	714
IN	73	29	3333
KS	88	24	218
KY	54	8	0
LA	37	27	233
MA	17	18	339
MD	93	30	0
ME	0	0	0
MI	16	27	0
MN	100	37	31
MO	85	37	213
MS	39	25	435
MT	435	63	101
NC	26	6	24
ND	236	156	83
NE	48	23	90
NH	168	0	0
NJ	53	28	1143
NM	0	10	18
NV	117	46	68
NY	10	4	0
OH	31	13	5625
OK	72	23	22
OR	17	9	0
PA	199	138	1667
RI	95	34	667
SC	83	28	2500
SD	89	42	117
TN	62	24	0
TX	110	59	101
UT	39	6	0
VA	19	9	0
VT	134	0	0
WA	22	31	65
WI	128	37	105
WV	36	0	0
WY	0	0	0

PINK SHADING = Above the average for all states
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

TABLE 8

School Arrests for Girls by Race, per 10,000

State	Black Girl Arrests per 10,000 Students	Native American Girls Arrests per 10,000	Hawaiian/Pac. Islander Girl Arrests per 10,000	Latina Arrests per 10,000	White Girl Arrests per 10,000	Asian Girl Arrests per 10,000
NATION	20	17	14	7	5	1
AK	0	0	0	0	1	0
AL	22	13	0	2	4	0
AR	16	12	34	9	6	0
AZ	16	22	9	10	6	0
CA	11	9	7	3	2	1
CO	3	23	0	2	1	1
CT	50	40	0	34	8	2
DC	27	0	0	3	0	0
DE	41	0	0	19	16	0
FL	9	12	0	3	3	0
GA	24	0	16	9	8	2
HI	33	0	32	21	20	13
IA	109	69	110	10	12	10
ID	0	10	0	2	2	0
IL	33	12	0	10	7	2
IN	29	41	37	11	9	0
KS	16	14	0	7	4	3
KY	17	0	0	3	3	0
LA	25	0	0	10	4	0
MA	5	0	0	7	1	1
MD	29	0	24	8	11	1
ME	0	0	0	0	2	13
MI	12	7	0	3	1	0
MN	25	35	0	12	6	1
MO	30	0	0	6	5	4
MS	14	0	0	11	7	0
MT	0	86	0	13	7	0
NC	6	4	0	2	1	1
ND	40	36	0	26	6	0
NE	2	18	0	4	4	0
NH	34	64	0	9	6	7
NJ	19	0	0	9	4	1
NM	6	6	0	4	4	0
NV	29	94	31	17	14	11
NY	4	2	0	1	2	0
OH	8	0	0	4	3	1
OK	25	11	0	6	7	3
OR	0	0	0	3	1	0
PA	63	43	0	35	12	2
RI	24	0	0	20	4	0
SC	36	14	32	5	12	7
SD	0	74	0	24	7	0
TN	19	0	57	6	7	0
TX	24	9	13	10	5	2
UT	0	0	0	0	1	0
VA	4	0	0	3	1	0
VT	20	0	0	0	4	0
WA	2	14	3	13	6	1
WI	64	34	0	15	10	4
WV	19	0	0	9	2	0
WY	0	43	0	3	2	0

PINK SHADING = Above the average for all states
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Trends in School Arrests and Referrals to Law Enforcement

Nationwide, the CRDC data appears to indicate a 3 percent growth in reported school arrests and a 17 percent growth in referrals to law enforcement from 2013-14 to 2015-16 (see Table 9). Five states more than doubled their number of reported arrests. We did not see this increase in all states, and in some states, there appeared to be evidence of reporting errors (see Appendices A and B). For example, Alaska reported 833 school arrests in 2013-14 compared to just four arrests in 2015-16, indicating potential underreporting in the more recent year (2015-2016). In contrast, Alabama only reported 47 arrests in 2013-14 compared to 1,077 arrests in 2015-16; this 20-fold increase suggests underreporting in the 2013-14 school year.

There were increases in referrals to law enforcement across states from 2013-14 to 2015-16 that can be corroborated by other sources. For example, there was a 44 percent increase in referrals to law enforcement in California, increasing from 19,685 in 2013-14 to 28,313 in 2015-16. A report by the Children's Defense Fund and Youth Justice Coalition found that in Los Angeles County alone, thousands of students received referrals to law enforcement and were placed on "voluntary probation" for minor misbehavior in recent years. Despite the state intention to limit youth involvement with the criminal justice system, California's Juvenile Justice Crime Prevention Act invested millions of dollars into "net-widening" programs contributing to the school-to-prison pipeline. In July 2018, the ACLU of Southern California filed a lawsuit against Riverside County for implementing such programs in a discriminatory and unconstitutional way. Tens of thousands of Riverside students were referred to law enforcement for reasons including bad grades, tardiness, or talking back to teachers. Programs like this may have contributed to the 17 percent rise in law enforcement referrals nationwide.

> "Tens of thousands of Riverside [CA] students were referred to law enforcement for reasons including bad grades, tardiness, or talking back to teachers. Programs like this may have contributed to the 17 percent rise in law enforcement referrals nationwide."
>
> — ***ACLU of Southern California lawsuit***

TABLE 9

State Trends in Reported School Arrests and Law Enforcement Referrals

State	2013-14 Arrests Total	2015-16 Arrests Total	Increase/ Decrease in Number of Arrests	Increase/ Decrease in Percent of Arrests	2013-14 Referrals Total	2015-16 Referrals Total	Increase/ Decrease in Number of Referrals	Increase/ Decrease in Percent of Referrals
NATION	60,170	61,812	1,642	3%	195,219	235,483	40,264	21%
AK	833	4	-829	N/A	1,951	454	-1,497	N/A
AL	47	1,077	1,030	N/A	436	2,191	1,755	403%
AR	962	751	-211	-22%	3,757	1,511	-2,246	-60%
AZ	451	1,640	1,189	N/A	1,042	4,867	3,825	367%
CA	8,217	3,411	-4,806	-58%	19,685	28,313	8,628	44%
CO	394	347	-47	-12%	5,450	5,182	-268	-5%
CT	1,643	1,750	107	7%	2,396	2,493	97	4%
DC	273	169	-104	-38%	336	218	-118	-35%
DE	110	465	355	N/A	1,437	1,700	263	18%
FL	1,323	1,919	596	45%	13,749	21,208	7,459	54%
GA	4,324	3,980	-344	-8%	5,706	6,720	1,014	18%
HI	563	672	109	19%	18,092	761	-17,331	-96%
IA	601	1,230	629	105%	1,762	2,779	1,017	58%
ID	83	138	55	66%	1,006	952	-54	-5%
IL	4,413	3,605	-808	-18%	9,709	9,000	-709	-7%
IN	1,736	1,850	114	7%	3,280	2,926	-354	-11%
KS	3,224	521	-2,703	-84%	1,942	2,245	303	16%
KY	333	451	118	35%	713	1,809	1,096	154%
LA	783	1,143	360	46%	1,431	1,657	226	16%
MA	798	343	-455	-57%	1,712	1,513	-199	-12%
MD	1,629	2,136	507	31%	2,754	4,610	1,856	67%
ME	25	56	31	124%	622	833	211	34%
MI	410	699	289	70%	3,244	3,652	408	13%
MN	1,189	1,195	6	1%	4,691	6,128	1,437	31%
MO	1,336	1,487	151	11%	3,782	5,355	1,573	42%
MS	898	793	-105	-12%	1,726	1,392	-334	-19%
MT	181	326	145	80%	874	1,121	247	28%
NC	217	604	387	178%	3,280	6,786	3,506	107%
ND	120	200	80	67%	379	609	230	61%
NE	283	205	-78	-28%	1,529	1,502	-27	-2%
NH	248	220	-28	-11%	1,074	1,464	390	36%
NJ	740	1,379	639	86%	2,705	3,511	806	30%
NM	241	188	-53	-22%	1,810	1,291	-519	-29%
NV	1,483	1,194	-289	-19%	786	2,728	1,942	247%
NY	693	849	156	23%	6,065	8,218	2,153	35%
OH	1,292	967	-325	-25%	2,206	3,518	1,312	59%
OK	643	1,054	411	64%	2,094	3,806	1,712	82%
OR	366	201	-165	-45%	1,079	1,320	241	22%
PA	4,517	5,647	1,130	25%	11,840	21,860	10,020	85%
RI	132	231	99	75%	367	974	607	165%
SC	1,719	2,046	327	19%	2,750	3,192	442	16%
SD	223	270	47	21%	759	1,069	310	41%
TN	1,012	1,464	452	45%	2,454	3,856	1,402	57%
TX	6,513	8,920	2,407	37%	14,891	16,514	1,623	11%
UT	244	137	-107	-44%	1,993	2,222	229	11%
VA	758	536	-222	-29%	13,085	16,123	3,038	23%
VT	50	61	11	22%	305	295	-10	-3%
WA	537	1,125	588	109%	2,782	2,870	88	3%
WI	1,311	1,991	680	52%	6,317	8,435	2,118	34%
WV	40	109	69	173%	640	731	91	14%
WY	9	56	47	N/A	744	999	255	34%

PINK SHADING = Top Ten States
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Reported "Serious Offenses" and School Shootings

In 2015-2016, the U.S. Department of Education's CRDC required schools to report serious offenses that occurred for the first time. As detailed in Table 10, these offenses include 12 specific type of incidents involving violence or threats that have to be reported to the federal government by all 96,000 public schools. In the 2015-16 school year, there were roughly a million serious offenses reported involving students in public schools; 3 percent of these offenses involved a weapon and approximately 1 percent were incidents that involved sexual assaults (other than rape) and a tenth of a percent (1 per 1,000 incidents) involved a rape or attempted rape. Much more common were reports of physical altercations *without* a weapon (75 percent) or threats of such types of physical altercations (19 percent). Given the relatively limited number of "the most egregious offenses"—those involving a weapon and those of sexual violence (44,600), the 290,000 arrests and referrals to law enforcement reported in the 2015-16 school year appear excessive. This provides further evidence that students are being arrested for minor misbehavior.

> *"[T]he spate of gun violence in our schools is a public health issue—both tragic and preventable. Therefore, SSWAA supports "school softening," not "school hardening." We prefer to focus on prevention ... having caring, highly-trained adults—including school social workers, school psychologists, school counselors, school nurses, and other specialized instructional support personnel—in every school. It means having a strong multi-disciplinary team in place to develop a positive school environment for every student."*
>
> — ***School Social Work Association of America*** *to the Federal Commission on School Safety*

TABLE 10

Prevalence of Incidents Classified as "Serious Offenses"

TYPE OF INCIDENT	NUMBER OF INCIDENTS	PERCENT OF INCIDENTS
Physical attack or fight *without* a weapon	789,800	75%
Threats of physical attack *without* a weapon	200,800	19%
Robbery *without* a weapon	22,900	2%
Physical attack or fight *with* a weapon	11,900	1%
Threats of physical attack *with* a weapon	10,100	1%
Sexual assault (other than rape)	10,100	1%
Possession of a firearm or explosive device	5,700	1%
Threats of physical attack *with* a firearm or explosive device	3,500	0.3%
Physical attack or fight *with* a firearm or explosive device	2,200	0.2%
Rape or attempted rape	1,100	0.1%
Robbery *with* a weapon	640	0.1%
Robbery *with* a firearm or explosive device	560	0.1%

Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

In addition to requiring schools to report serious offenses for the first time, in 2015-2016, the U.S. Department of Education also required schools to report all school-related shootings and homicides. In its April 2018 publication highlighting the data on "School Climate and Safety," the U.S. Department of Education reported the number of school shootings for 2015-2016 as "nearly 240." We followed up with schools individually and found nearly 140 of them confirmed federal reporting was erroneous, indicating flaws in the U.S. department's data cleaning and verification methods that resulted in inflating the number of school shootings by the hundreds. Specifically, only 11 schools confirmed school shootings, a far cry from the nearly 240 reported by the department. Two school districts mistakenly and inexplicably reported each of their schools as having a shooting. The data from these two districts accounted for 63 of the reported shootings. The Cleveland Metropolitan School District reported 37 of the shootings, which is the most of any district (16 percent of the 234 reported shootings). District staff confirmed that there were zero shootings that year.

Our research on the overreporting of school shootings in the U.S. Department of Education data was corroborated by an NPR investigation. Furthermore, Everytown[83] compiled school shooting news articles and found that less than 30 school shootings appeared in the media during the 2015-16 school year.

Conclusion

The findings of this report indicate a severe shortage of the staff most critical to school safety and positive school climate—school-based mental health providers. As a result, school counselors, psychologists, nurses, and social workers are overwhelmed with student caseloads that compromise quality and result in children with unmet needs. This creates one of the greatest vulnerabilities for school safety. Our findings indicate that too many schools are more likely to employ school police than mental health providers: there are more than 14 million students in schools with police but no counselor, nurse, psychologist, or social worker. Yet, the federal government is directing funding toward hiring school police instead of mental health providers. This prioritization of school police is troubling, not only for the lack of mental health support for our nation's students, but also given that research indicates school police do not reduce mass shootings and instead contribute to less inclusive school climates. Research confirms that it is normal for youth to engage in challenging behavior during adolescence.[84] Responding to common youth behavior with criminalization exacerbates undesirable behavior and causes children to fall behind academically, placing students further at risk.[85] The growth of school policing and school hardening devour resources from already underserved schools and contribute to hundreds of thousands of youth being funneled into the criminal justice system. As this report demonstrated, this disproportionately impacts students of color and students with disabilities, both of whom are arrested at rates 10 times higher in some states compared with white students and students without disabilities.

Despite the unprecedented policing, this generation of children has some of the lowest crime rates. Drug use among youth remains among the lowest ever.[86] Juvenile crime rates have consistently fallen every year for the last decade and are at a historic low.[87] Despite recent tragic school shootings, youth are no less safe in school—only 3 percent of students murdered each year die at school, a rate that has remained constant for decades.[88] The Trump administration has relied on grossly inaccurate school shooting data to create a false narrative about school safety while pushing for hardened schools. And while the teen homicide rate increased from 7 to 9 deaths per 100,000 youth between 2013 and 2016, the rate remains less than half of its all-time high of 20 deaths per 100,000, in 1993.[89]

Combined with the unprecedented needs of today's youth, the severe understaffing of school-based social, emotional, and behavioral support providers raises concern about school safety. President Trump's school safety commission released a 2018 report that acknowledged the importance of mental health, yet disregarded facts and their very own data. The administration ignored calls from student activists for meaningful gun control, opting instead to push the preposterous narrative of a connection between mass shootings and school discipline. The administration also ignored calls to increase resources for additional counselors and other support for students.

Because of the proven effectiveness of school-based mental health (SBMH) supports and the critical contribution these professionals make to a safe and supportive school environment, access to these SBMH staff should be considered a civil right.[90] This civil right should be at the forefront of our conversation about school safety and student success. Schools and decision makers that prioritize law enforcement in schools over SBMH providers do more harm than good. More law enforcement is not the answer. More student supports, however, is critical.

We must continue to ask the hard questions about the utility and efficacy of these programs at the local, state, and federal levels. The next section outlines steps at the federal, state, and local level that can be taken to support student success, safety, and civil rights, as detailed in the next section. We must expand our efforts to empower students and parents to know and understand their rights to combat these suspect policies and practices on the individual level.

Recommendations

Federal-Level Recommendations

- **Invest Significantly in Student Supports**: Increase funding for student support services, including mental health staffing and programming. Most children receive part of their mental health support and services at school, leaving providers overburdened with high caseloads. A current bill circulating in the Senate, the Elementary and Secondary School Counselors Act. proposes to appropriate $5 billion dollars to fund school based mental health services providers. Support this bill and lobby for others like it. The tragedy at Parkland, Florida was preceded by multiple failures to support a student with disabilities and a decision to exclude him from school entirely. A month after the Parkland tragedy, bipartisan support approved the largest military budget in our country's history—over $700 billion. America's school children deserve at least of that amount. Investments are needed to support college pathways to train tens of thousands of mental and physical health providers for schools. Positive discipline practices cannot be implemented if there are not mental health service providers to carry them out.

- **Provide Equal Protection for Students.** As the Trump administration rolls back guidance to clarify and protect the civil rights of students, Congress must take the lead on ensuring our students are treated equitably at school. Exclusionary practices harm the positive school climate that research indicates contributes to low levels of school violence. In Cleveland, a 2007 shooting occurred when a 14-year-old student shot four people and killed himself after returning to school "disgruntled after being suspended." Following the 2007 shooting, the Cleveland Metropolitan School District underwent a comprehensive evaluation of the conditions leading to the tragedy. The findings listed a series of factors contributing to the poor school climate and the increasingly unsafe learning environment. The list includes inconsistent approaches to school discipline, poor supervision, and a lack of social and emotional role modeling by school staff. Academic achievement and positive behaviors increase in schools where students and staff feel physically and emotionally safe, connected, fairly treated, and valued.[91] Prompt federal action on this issue could include:

    - Legislation and funding that supports positive discipline practices, such as restorative justice and social-emotional learning programming.
    - Legislation limiting exclusionary discipline and creating procedures to protect student due process rights when excluded from their school.
    - Ensuring that the U.S. Department of Education's Office of Civil Rights thoroughly investigates complaints.

- **Improve Data Collection.** It is clear that states are failing to report accurate data and policy is being made based on inaccurate reports.

    - Official data correction from the U.S. Department of Education. The Trump administration has promoted false information about school shootings that states and school boards across

the nation are relying on as they develop policy. It may have inflated the number of school shootings by the hundreds, and this should have been corrected in the commission's report.

- Review and clean school shooting data for any future reporting so that there is a more informed response to school safety.
- Implement data error triggers to create increased accountability for districts and states in the process of data collection to minimize inaccurate data. Too many states have underreported or failed to report required data.
- Clarify CRDC definitions with expert input. For example, the definition of "psychologist" is problematic because it includes contractors and does not focus on school psychologists. It also focuses exclusively on assessments/evaluations and omits critical prevention and intervention services provided by school psychologists.

- **Do Not Provide Federal Funds for Weapons in School.** Listen to the call of educators echoed in the #ArmMeWith movement. The federal Gun Free School Zone Act of 1990 prohibits the carrying of loaded or unlocked firearms within 1,000 feet of K-12 schools, with the exception of law enforcement acting in their official capacity, or concealed carry permit holders in some states. Over 30 states prohibit the possession of guns on school property, even by individuals with a valid concealed carry permit.

- **Federal Funds Should Not Be Provided for Law Enforcement in School.** Police should not have a routine presence in schools. School districts should not receive federal funds for law enforcement. Support federal legislation to define the role of police entering in schools and that would end their involvement in disciplining students that would best be conducted by school-based mental health professionals.

Statement From the California Association of School Counselors

It is unconscionable that, 5.9 million of California's 6.2 million students (96 percent) were in schools where school counselor caseloads did not meet the 250:1 recommendation. California school counselors have nearly three times the recommended ratios, and this report draws an important correlation between inadequate staffing of credentialed, school-based mental health service staff, and the damaging effects to our children and youth. We must ask, "Is it even possible for school counselors to know the face, name, and story of every student if their case load is 600+?" The answer is a resounding "no"! Recent studies indicate that students feel disconnected and often disenfranchised within our public-school system, and do not feel adults are there to sufficiently help them. Several studies suggest access to school counselors and lower school counselor-to-student ratios benefit students, particularly those from underrepresented ethnic groups and students who are identified as special education.

The California Association of School Counselors recommends that states designate specific financial resources to hire credentialed, school-based mental health service staff to meet the developmental, psychological and functional needs of students in the PreK-12th grade school system. It should be a fundamental right that every student in this nation have access to a full-time school counselor and every counselor have a reasonable caseload of 250:1. We encourage lawmakers and educational leaders to fully fund schools and reallocate financial resources to meet U.S. students' social and emotional needs to be successful in school and in life.

— ***Dr. Loretta Whitson,*** *Executive Director, California Association of School Counselors*

- **Ensure Legistation Does Not Unnecessarily Criminalize Students.** Specifically, ensure the STOP School Violence Act (2018) does not support problematic threat assessments, policies, or "anonymous warnings" systems that unnecessarily criminalize students. Ensure federal support of evidence-based threat assessments like the Virginia Student Assessment Guidelines with fidelity to ensure students' rights are not being violated in the process of threat detection.

> "Key report recommendations are contradictory and even potentially harmful. Most concerning are the calls to harden schools and arm school staff and the recommendation to rescind Obama era discipline guidance, which directs schools to address racial disparities in discipline and promotes alternatives to suspension and expulsion."
>
> — ***National Association of School Psychologists*** *regarding the Federal Commission on School Safety Report*

State-Level Recommendations

- **Prioritize Funding of Student Support Services Over Law Enforcement.**
- **Advocate for School Mental Health Services Within State Policy**, as recommended by the National Association of School Psychologists (NASP). Commit to long-term investments and partnerships. As stated by NASP, "policymakers need to work with higher education institutions to find a way to increase the number of qualified school psychologists in their state. States then need to provide additional funding so that schools can hire the personnel that they need. This is an issue that could take some states ten years or more to solve—but it [is] worth a decade of work to provide our public-school students with the support that they need."
- **Invest in Evidence-Based and Culturally Responsive Social-Emotional Learning Programs** that are found to prevent bullying and misbehavior and would support students..
- **Ensure Accurate Data** is submitted to the CRDC in 2019 and beyond.
- **Support Investigations** by state education departments and the Attorney General's Office into complaints and allegations of discrimination.
- **Ensure Accurate State-Level Reporting** of the number of law enforcement, security guards, school arrests, and referrals to law enforcement. Some states like Florida and Pennsylvania collect and report these data. In September of 2018, Pennsylvania took another small step to increase accountability. The state's Safety and Security Committee adopted criteria for the assessment of school safety and security. It states that schools employing any type of security staff should collect information from staff, students, and parents, and the community about their perceptions of that presence. The analysis should be able to be disaggregated to look at different sub-populations of students, including disproportionality and the issue of equity.[9]

District/School-Level Recommendations

- **Use Local Resources to Prioritize School-Based Mental Health Providers**, such as counselors, school psychologists, social workers, and nurses.

- **End Routine Policing Practices Inside Schools**. Police should enter schools only to address threats to physical safety.
- **Require Equity Assessments** of all schools with police that evaluate their impact.
- **Reinvest Resources** from law enforcement to support staff.
- **End the Practice of Arrests and Referrals to Law Enforcement for Common Adolescent Behaviors**, including but not limited to misdemeanor offenses, such as disturbing schools and disorderly conduct. Adopt school codes of conduct that eschew zero tolerance for more appropriate, child-driven responses to challenging behavior.
- **Limit the Adoption of Highly-Visible, Tough Security Measures**. Such stringent measures are associated with a decrease in students' feeling of safety and lower perception of the school environment.[92]
- **Ensure Accurate Data** is submitted to the CRDC in 2019 and beyond.
- **Ensure That School-Based Mental Providers Are Able to Focus on Mental Health Duties**, i.e., that counselors are in fact counseling, rather than primarily spending their time with tasks that have nothing to do with their training (e.g., achievement test proctoring, clerical tasks, schedules, etc.).
- **Provide Trauma-Informed Services and Trainings.** While experiencing traumatic events does not necessarily lead to mental or behavioral health concerns, it is critical that staff are aware of the potential impacts of these events on students and how to meet their needs.
- **End Punitive and Net Widening Juvenile Probation and Diversionary Programs** that sweep youth into the juvenile justice system.
- **Pass Local Transparency Bills** such as the Student Safety Act in New York City, and ensure compliance with all aspects.
- **Enact Policies That End Police Presence in Schools and Create Specific Protocols for Police Presence**, including for when police should be called by school administrators. Again, there should be NO permanent or routine policing of schools. Schools should have an internal crisis plan with de-escalation techniques and protocols to follow before calling police. When police are called or seek access to a student, the school should have Memoranda of Understanding (MOUs) with law enforcement responsive to the community to ensure that schools (i) notify a parent or guardian to provide them with an opportunity to be present, and (ii) always read a student their rights.
- **Mandate Training for Police** on topics like adolescent development, implicit bias, communication, and de-escalation. Training should be part of law enforcement's budgets to ensure improved services to all community members, including students. Funds should not be appropriated from student funding.

Example District Recommendations and Policies From a Settlement

As a result of an ACLU lawsuit, a sheriff's office in Kentucky agreed to pay more than $337,000 for the painful and unconstitutional handcuffing of elementary school students with disabilities.

1. Law enforcement should not be inside elementary schools. Elementary school children are not criminals. They do not have the 'mens rea' to commit a crime.
2. Elementary school children are at a vulnerable, tender age. Many of them are trying to grow and learn under difficult circumstances. If there is a behavioral problem, the students—and the school—need to have access to counselors, psychologists, and nurses who can understand and address the root causes.
3. Bringing in law enforcement only serves to traumatize children, making behavioral issues worse and creating greater problems for their healthy development.
4. If the community is so concerned about outside threats, bad actors coming onto the property, or any other dangers to students, then police can be posted outside the school building. But, under no circumstances should they be called into the school, absent an active shooter or similar threat to lives.

From the *Framework for Safe and Successful Schools* by the National Association of School Psychologists, American School Counselor Association, School Social Work Association of America, et. al:

Policy Recommendations to Support Effective School Safety

1. Allow for blended, flexible use of funding streams in education and mental health services;
2. Improve staffing ratios to allow for the delivery of a full range of services and effective school-community partnerships;
3. Develop evidence-based standards for district-level policies to promote effective school discipline and positive behavior;
4. Fund continuous and sustainable crisis and emergency preparedness, response, and recovery planning and training that uses evidence-based models;
5. Provide incentives for intra- and interagency collaboration;
6. Support multi-tiered systems of support (MTSS).

Best Practices for Creating Safe and Successful Schools

1. Fully integrate learning supports (e.g., behavioral, mental health, and social services), instruction, and school management within a comprehensive, cohesive approach that facilitates multidisciplinary collaboration.
2. Implement multi-tiered systems of support (MTSS) that encompass prevention, wellness promotion, and interventions that increase in intensity based on student need, and that that also promote intimate school community collaboration.
3. Improve access to school-based mental health supports by ensuring adequate staffing levels, meaning school-employed mental health providers who are trained to infuse prevention and intervention services into the learning process and to help integrate services provided through school-community partnerships into existing school initiatives.
4. Integrate ongoing positive climate and safety efforts with crisis prevention, preparedness, response, and recovery to ensure that crisis training and plans: (a) are relevant to the school context, (b) reinforce learning, (c) make maximum use of existing staff resources, (d) facilitate effective threat assessment, and (e) are consistently reviewed and practiced.
5. Balance physical and psychological safety to avoid overly restrictive measures (e.g., armed guards, metal detectors) that can undermine the learning environment. Instead combine reasonable physical security measures (e.g., locked doors, monitored public spaces) with efforts to enhance school climate, build trusting relationships, and encourage students and adults to report potential threats.
6. Employ effective, positive school discipline that: (a) functions in concert with efforts to address school safety and climate; (b) is not simply punitive (e.g., zero tolerance); (c) is clear, consistent, and equitable; and (d) reinforces positive behaviors. Using security personnel or SROs primarily as a substitute for effective discipline policies does not contribute to school safety and can perpetuate the school-to-prison pipeline.
7. Consider the context of each school and its district and provide those services that are the most needed, appropriate, and culturally sensitive to that school's unique student population and learning community.
8. Acknowledge that sustainable and effective change takes time, and that individual schools will vary in their readiness to implement improvements. These schools should be afforded the time and resources necessary to sustain such change over time.

Appendices

Appendix A: Methodology, Data Cleaning, Definitions, and Limitations

Data Source: The data used in this report comes from the U.S. Department of Education's Civil Rights Data Collection (CRDC). This is a survey administered to public schools by the U.S. Department of Education's Office for Civil Rights (OCR). The data are sometimes referred to as the "OCR" data and sometimes as the "CRDC"; the two are identical. The vast majority of the data for this report is drawn from the 2015-2016 school year data (the most recently available CRDC data), however data from the 2013-2014 school year is used in examination of trends of school arrests and referrals and in cases where 2015-2016 data wasn't available for law enforcement (as noted). The 2015-2016 data were made available to the public in April 2018. The data and more details about the data collection can be found online at http://ocrdata.ed.gov. The state and national level data presented in this snapshot are built up from the school level data.

Sample: The OCR gathered data from every public school in the nation. There were over 96,000 schools total.

- **Data omissions:** Although there are over 50 million students enrolled in U.S. schools, in order to improve precision, the following students were excluded from our analyses, resulting in a total of 49,977,268 students in our analytic sample.
- **Students identified as having disabilities under "section 504 only:"** This report excluded these students because the Civil Rights Data Collection did not collect data on arrests/ referrals disaggregated by race. Their omission did not have an impact on what is reported for students with disabilities identified under the Individuals with Disabilities Education Act (IDEA). However, schools with less than 8 students are not publicly reported in enrollment because of data suppression. Many of these schools still publicly reported arrests for the students.
- **Students in juvenile justice facilities:** This report excluded 608 schools from the analysis because they consisted of students in juvenile justice facilities. These schools enrolled over 30,000 incarcerated children. Although this information is valuable, these educational settings vary significantly from traditional schools and deserve separate analysis. Most of the schools did not report arrests since the students had already been arrested and adjudicated. Many of these students, however, are also the students deleteriously impacted by over-policing and funneled into the criminal system.
- **Students in virtual schools:** "Virtual" schools and districts were removed from this analysis. Students who attend school from their own home typically do not experience school arrests, and have varying or no access to counselors and additional support staff. These schools enrolled more than 227,000 students and were identified by words like "virtual," "cyber," "online," "connections academy," or "electronic classroom of tomorrow" in the school name.
- **Students in pre-K settings:** This analysis removed over 1,600 pre-K schools that enroll over 258,000 students to better focus on grades K–12. It is noteworthy, however, that these pre-K schools had roughly 208 counselors and 65 law **enforcement officers.**

States with Missing Data: States where the data appear to be missing or erroneous are marked with an asterisk in the maps and highlighted in tables. The following states had limited or missing data about the

number of law enforcement officers: Florida, Hawaii, and New York. New York had limited or missing data about the number of student arrests as well. The following states had limited or missing data about their number of psychologists: Florida, Hawaii, Iowa, Mississippi, and Alabama. The following states had limited or missing data about the numbers of social workers: Florida, Hawaii, West Virginia, Washington, and Texas.

Calculating Rates Per 10,000: To enable comparisons despite enrollment differences for each subgroup, the number of school arrests/referrals are divided by enrollment and multiplied by 10,000 to provide arrests and referral rates.

Sworn Law Enforcement Data "Anomaly": The U.S. Department of Education 2015-16 Civil Rights Data Collections' Public Use Data File User's Manual, published in April 2018 stated, "[t]he Sworn Law Enforcement Officers indicator question was inadvertently carried over from the 2013-14 data collection and displayed in the submission tool for 2015-16. This carryover caused a reporting issue with the SCH_FTESECURITY_LEO data element. Although the data element was required for all schools, the data element was skipped for over 69,000 of those schools." Among other things, this means that users accessing the CRDC will encounter discrepancies regarding the number of law enforcement at a school. Before conducting our analysis, we replaced the missing values for the schools with the carryover issue with their 2013-14 data. These 2013-14 numbers are the numbers reflected in the online 2015-16 CRDC interface as well.

To produce aggregate law enforcement staffing numbers reflected on OCR's page for 2015-16 data, we merged the SLEO data from the 2013-14 data. However, the data is reflected differently depending on where you find it on OCR's website. For example, the homepage of the data for Oakland Unified, reflects 6 SLEO reported for the 2015-16 school year (scroll to the bottom). However, the "Staffing and Finance" tab for Oakland on the left reports "0" SLEO for the same school year. This discrepancy is created because the latter does not reflect the data from the carryover.

Limitations: Data issues were apparent in some states for categories like social workers, nurses, and psychologists. It is unclear how many of these low numbers come from a complete or partial failure to report. For example, zero psychologists were reported for the entire state of Hawaii, which is a clear error due to a failure to report. Florida, on the other hand, reported 26 nurses for the entire state, but other state data reflects different numbers (See Appendix B for further information).

School arrests and the number of school police also appear to be underreported. For example, an ACLU of Southern California report using state data from the 2015-16 school year found that Oakland and Los Angeles reported significantly more school police to state agencies than they did to the U.S. Department of Education.[93]

Furthermore, the CDRC itself is limited in the data it collects related to school arrests and law enforcement referrals and as such, cannot provide information about all students who maybe differentially impacted. Specifically, prior research indicates that lesbian, gay, bisexual, transgender, and queer (LGBTQ) students are at higher risk of school policing than general student population and are overrepresented in both school disciplinary incidents and in the juvenile justice system - and those risks are even greater for Black, Native American, and Latinx LGBTQ youth and LGBTQ students with disabilities.[94] Currently, the CRDC provides demographic data for students based on race/ethnicity and disability status, but does not include information on students' sexual orientation or gender identity (i.e., transgender status) and therefore we were not able to assess potential disparities for LGBTQ students in this report. Given current discriminatory policies and

practices in many schools across the country and potential concerns regarding parental rights to access of school records, requiring school officials to record students' sexual orientation or gender identity may result in unintended negative consequences to LGBTQ students. Further examination is warranted to determine best practices for CRDC and other data collection tools in order to assess impact of school policing for LGBTQ student populations.

Appendix B: Districts and States Failing to Report and Comply

Under 34 CFR §100.6(b), school districts and local education agencies are required to submit accurate data to the U.S. Department of Education ("shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times"). Every public school district must designate specific employees to ensure schools are in compliance with federal civil rights laws. However, a large number of districts failed to meet this obligation in some categories. Table A1 lists data gaps with districts enrolling more than 100,000 students. Specifically staffing categories reporting less than 20 individuals are highlighted red because of the likelihood of underreporting. Although most of the large districts with reporting failures were in Florida, districts throughout the country failed to correctly report key information about personnel in their schools. Gwinnett County enrolls 175,000 students in Georgia and failed to report most counselors, police, and other personnel staff. Many moderate-sized districts like Montebello Unified (28,000 students) and Cartwright Elementary District (18,000 students) failed to report counselors while reporting sworn law enforcement. Another startling example comes from the country's largest school district: New York City. The district failed to report both sworn law enforcement and security guards. However, the New York Police Department ("NYPD") has maintained an extremely large number of officers within NYC schools since 1998.[95] During the 2015-2016 school year, the NYPD employed approximately 5,200 agents across New York City Department of Education schools.[96] This means that there are over 1,000 more police officers in NYC schools than there are guidance counselors and social workers combined.

TABLE A1

Districts with 100,000+ Students and Their Data Obligation Failures

State	DISTRICT	Students Enrolled	Counselors	Nurses	Psychologists	Social Workers	Sworn Law Enforcement	Security Guards
	NATIONAL	49,977,268	112,586	53,389	32,754	23,138	27,235	27,737
NY	NEW YORK CITY PUBLIC SCH	983,712	2,630	1,441	1,076	1,123	0*	0*
CA	LOS ANGELES UNIFIED	539,634	1,221	1,121	1,813	234	218	49
IL	CITY OF CHICAGO SD 299	390,850	928	49	40	139	430	1,370
FL	DADE	356,736	554	17	9	9	90	4
NV	CLARK COUNTY SCHOOL DIS	326,002	657	139	164	21	65	157
FL	BROWARD	268,597	341	0	0	6	201	383
FL	HILLSBOROUGH	210,768	394	0	156	127	100	0
TX	HOUSTON ISD	207,649	141	214	3	23	100	20
FL	ORANGE	196,553	319	0	2	4	183	78
FL	PALM BEACH	188,104	335	0	11	9	175	12
VA	FAIRFAX CO PBLC SCHS	185,563	645	64	153	140	53	150
HI	HAWAII DEPARTMENT OF EDI	182,836	625	4	0	4	1	240
GA	GWINNETT COUNTY	175,958	328	1	0	6	68	0
NC	WAKE COUNTY SCHOOLS	159,149	441	0	4	7	59	14
TX	DALLAS ISD	157,821	371	208	0	4	82	50
MD	MONTGOMERY COUNTY PUB	156,819	462	0	0	0	26	218
NC	CHARLOTTE-MECKLENBURG	149,270	398	155	70	48	69	89
MD	PRINCE GEORGE'S COUNTY F	141,194	360	206	200	5	72	18
PA	PHILADELPHIA CITY SD	133,503	239	169	110	0	0	38
CA	SAN DIEGO UNIFIED	130,922	250	35	126	20	29	19
FL	DUVAL	128,244	238	0	0	2	189	189
TX	CYPRESS-FAIRBANKS ISD	113,912	213	81	0	0	38	1
GA	COBB COUNTY	112,708	269	135	38	30	120	0
TN	SHELBY COUNTY SCHOOLS	111,183	277	102	59	60	108	89
MD	BALTIMORE COUNTY PUBLIC	110,786	293	175	80	72	63	12
TX	NORTHSIDE ISD	105,049	290	105	3	0	45	0
FL	PINELLAS	102,629	203	0	0	1	40	0
GA	DEKALB COUNTY	101,355	263	66	43	37	43	94
FL	POLK	101,039	208	4	2	7	35	0

Similarly, the School District of Philadelphia reported no sworn law enforcement officers to the federal government. However, the district reported 358 school district-employed sworn officers to the Pennsylvania Department of Education (PDE), with the assignment of some in the 2015-16 school year.[97] Another Pennsylvania district, Plum Borough, did not submit data to the U.S. Department of Education for the past two data collections despite reporting school police on staff to PDE.[98] As was the case with previous years, Florida and Hawaii had serious statewide reporting issues.

Issues with Underreporting School Arrests and Law Enforcement Referrals

In many districts, it is nearly impossible to obtain accurate, up-to-date information about police activities in schools–including the number of arrests and the demographic breakdown of the students involved. Districts often do not keep track of this information because they see it as the police department's responsibility. This misconception is flawed, and police departments rarely keep records that accurately reflect information about school policing. The departments usually maintain a database of arrest reports, but those reports do not capture whether the arrestee was a student, whether the arrest took place in a school, whether the arrestee was a person with disabilities, etc. This lack of accurate recordkeeping obscures the often-disproportionate impact that police have on vulnerable student populations. It reinforces the notion that school police officers operate in a grey area with little accountability to educators. Worse, it makes systemic reform of school policing nearly impossible.

Both New York and the Los Angeles Unified School District failed to report school arrests despite enrolling a combined 1.5 million students. A UCLA report found the Los Angeles Unified School District made 3,389 arrests from 2014 to 2017, which indicates a clear failure to comply with federal reporting regulations. The report also found Black students were 25 percent of the total arrests/ citations/diversions in the district despite representing less than 9 percent of the student population.[99] In prior years, many districts that had reported zero arrests later confirmed that they do not keep track of those data despite the federal requirement to report it to the U.S. Department of Education. Technically, this means that these districts are out of compliance with a federal requirement. While we do believe that there are many schools and districts where not a single student was arrested or referred to law enforcement, we believe it would be a disservice to educators and advocates to report these data "as is" with no mention of our concerns about inaccuracy.

Under-reporting presents a large barrier to understanding the breadth and depth of inequity and detecting signs of unnecessarily harsh policies and practices. We believe that under-reporting is an even greater challenge to our understanding of what is really happening to Black students and children with disabilities. In four states, Arkansas, Kansas, Massachusetts, and West Virginia, we found what appears to be non-reporting in both categories in key urban districts. In each of these four, just one or two large districts constituted 20 percent or more of all the Black students enrolled in the state. The zeros at the district level led us to suspect non-reporting of referrals to law enforcement.

In 21 states, several large districts failed to report school arrests and law enforcement referrals. This had an important impact on state level reporting and racial disparities. For example, in New York City Public Schools and Rochester City School District, where 57.5 percent of all the Black students in the NY state are enrolled, no school-based arrests were reported to the CRDC. However, the NYPD separately tracks and reports school-based arrest data in New York City due to the Student Safety Act, a landmark transparency and data reporting bill.[100] Despite the report of zero school-based arrests to the CRDC during the 2015-2016 school year, the NYPD reported 952 school arrests. This number also underreports the number of arrests in NYC schools because of a change in reporting laws that came into effect in 2016.[101] Despite the transparency that the Student Safety Act brings to police interactions in NYC schools, gaps still remain. The NYPD does not fully comply with all requirements of the Student Safety Act, citing safety concerns. In addition, the NYPD claims that since it does not have access to data on students with disabilities, it cannot report law enforcement interactions with this student population. However, the New York City Department of Education does have this information and could cross reference the students who have been arrested with the list of students with individualized education plans. Without this data, it is difficult to understand the impact of school police on students with disabilities, a demographic of students that has typically been disproportionately impacted by school discipline. The table below compared four states across the different data points to compare reporting by the state with reporting by the federal CRDC.

TABLE A2

Comparison of 2015-16 State and Federal Data for CA, FL, and NY

2015-16		CA[102]	FL[103]	NY[104] & NYC[105]
School Arrests	CRDC	3,411	1,919	849[106]
	STATE	NO DATA	7,341[107]	STATE:NO DATA[108] NYC: 952[109]
Referrals to Law Enforcement*	CRDC	28,313	21,208	8,218
	STATE	NO DATA	NO DATA	STATE: NO DATA NYC: 1,641
School Counselors	CRDC	9,123	4,989	7,636
	STATE	8,955	5,757	STATE: NO DATA NYC: 2,850[110]
School Nurses	CRDC	4,196	26	5,028
	STATE	2,481	1,151[111]	STATE: NO DATA NYC: NO DATA
Psychologists	CRDC	6,233	195	4,204
	STATE	5,662	1,408	State: NO DATA NYC: 1,298[112]
Social Workers	CRDC	1,014	199	3,525
	STATE	528	1,105	STATE: NO DATA NYC: 1,193[113]
Teachers	CRDC	279,695	151,462	216,968
	STATE	298,339	194,519	STATE: 178,825[114] NYC: 76,349[115]
Sworn Law Enforcement	CRDC	2,080	1,810	737
	STATE	NO DATA	1,517[116]	State: NO DATA NYC: 5,203[117]
Security Guards	CRDC	4,228	954	3,008
	STATE	NO DATA	NO DATA	STATE: NO DATA NYC: NO DATA

NO DATA = State does not collect this data
CRDC Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

Appendix C: Additional School Staffing and School Arrests by Race and Disability Tables

TABLE A3

Student to Counselor, Psychologist, Nurse, and Social Worker Ratios by State

STATE	Student-to-Counselor Ratio	Student-to-Social Worker Ratio	Student-to-Psychologist Ratio	Student-to-Nurse Ratio	Student-to-Teachers Ratio	% of Students in Schools Failing to Meet Recommended Counselor Ratio	# of Students in Schools Failing to Meet Recommended Counselor Ratio
NATION	444	2,160	1,526	936	15.7	90%	44,880,809
AK	433	6,240	5,368	813	16.5	78%	102,501
AL	419	8,615	N/A	588	16.0	97%	718,743
AR	370	3,655	2,776	526	14.2	93%	446,973
AZ	758	3,382	1,593	1,294	19.5	97%	1,084,337
CA	682	6,132	998	1,482	22.2	96%	5,945,211
CO	503	2,258	1,578	2,853	17.2	90%	800,740
CT	326	580	548	435	12.0	60%	316,951
DC	347	365	410	528	12.2	77%	62,968
DE	424	2,547	825	532	14.5	92%	125,265
FL	554	N/A	N/A	N/A	18.2	98%	2,705,448
GA	480	5,272	6,390	1,288	15.6	99%	1,719,587
HI	292	N/A	N/A	N/A	15.3	70%	127,833
IA	378	8,973	N/A	625	14.1	89%	445,020
ID	479	8,447	2,014	1,857	19.3	93%	272,271
IL	555	741	1,261	871	14.9	89%	1,787,294
IN	532	1,829	2,607	755	16.9	95%	968,756
KS	407	1,360	1,157	636	13.9	90%	438,308
KY	442	3,400	2,057	921	16.2	96%	655,207
LA	504	1,979	3,365	923	14.7	95%	678,518
MA	304	1,522	825	480	12.8	66%	619,908
MD	383	2,324	1,198	917	14.1	89%	798,196
ME	303	617	1,830	503	12.0	67%	119,886
MI	693	1,051	2,184	4,199	18.8	96%	1,455,639
MN	582	852	1,273	928	14.7	93%	807,815
MO	328	2,250	4,867	488	13.7	85%	781,794
MS	432	4,956	N/A	942	14.7	94%	458,613
MT	207	2,475	698	707	12.9	73%	107,987
NC	370	1,584	2,527	1,259	13.6	89%	1,383,543
ND	260	655	2,162	2,453	11.7	72%	78,733
NE	347	3,350	1,164	676	13.0	82%	254,691
NH	237	2,408	919	407	12.2	49%	89,468
NJ	321	655	731	484	11.5	70%	948,154
NM	391	945	3,673	695	15.4	89%	297,308
NV	441	8,730	1,866	1,743	18.3	94%	435,172
NY**	357	773	648	542	12.6	71%	1,947,911
OH	507	4,854	1,084	991	16.2	93%	1,600,641
OK	302	5,167	3,301	1,312	15.6	87%	603,906
OR	481	8,831	3,393	4,112	19.8	94%	532,780
PA**	380	3,416	997	667	14.1	90%	1,527,512
RI	392	686	838	516	12.2	67%	94,760
SC	367	4,238	1,788	631	15.0	90%	680,762
SD	306	3,413	1,742	876	13.7	83%	113,913
TN	417	4,428	2,389	806	14.5	94%	930,296
TX	434	13,604	4,962	831	15.1	93%	4,888,084
UT	663	8,198	2,720	4,479	23.2	98%	645,451
VA	346	2,067	1,623	817	14.0	86%	1,103,137
VT	207	1,265	1,496	324	10.4	35%	29,001
WA	448	14,391	1,408	1,830	19.2	96%	1,040,221
WI	393	1,750	901	1,284	14.0	92%	774,868
WV	365	15,433	4,329	972	14.6	92%	255,128
WY	304	946	847	533	12.2	78%	73,600

PINK SHADING = Above the average for all states
Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

TABLE A4

School Arrest Disparities by Race and Disability by State—per 10,000

STATE	Black Student Arrests per 10,000	Black-White Arrest Gap per 10,000	Black-White Arrest Risk Ratio	Latino Student Arrests per 10,000	Latino-White Arrest Gap per 10,000	Latino-White Arrests Risk Ratio	Native American Arrests per 10,000 Students	Native American-White Arrest Gap per 10,000	Native American-White Arrests Risk Ratio	SWD Arrests per 10,000 Students	SWD American-White Arrest Gap per 10,000	SWD American-White Arrests Risk Ratio
NATION	28	19	3.1	11	3	1.3	22	13	2.5	29	19	2.9
AK	0	0	0.0	0	0	0.0	1	0	2.0	0	-24	0.0
AL	27	20	3.6	10	2	1.3	20	13	2.7	34	28	5.3
AR	27	17	2.8	23	13	2.4	11	2	1.2	31	21	3.1
AZ	29	18	2.8	16	6	1.6	35	25	3.5	33	23	3.2
CA	18	14	4.4	5	1	1.3	13	8	3.0	14	4	1.4
CO	11	8	4.0	5	2	1.6	11	8	4.0	6	-4	0.6
CT	71	53	4.0	53	36	3.0	42	24	2.4	100	85	6.6
DC	27	27	0.0	10	10	0.0	0	0	0.0	48	30	2.7
DE	54	30	2.2	26	1	1.0	0	-25	0.0	65	60	4.6
FL	14	9	2.8	5	0	1.1	15	11	3.2	16	7	1.7
GA	36	23	2.6	17	4	1.3	31	17	2.3	51	43	6.5
HI	39	6	1.2	28	-5	0.9	61	28	1.9	108	96	8.7
IA	125	95	4.1	22	-9	0.7	51	20	1.6	57	49	6.9
ID	6	2	1.4	5	1	1.2	20	16	4.5	13	8	2.5
IL	42	32	4.0	17	6	1.6	29	18	2.7	47	39	5.7
IN	38	17	1.8	14	-8	0.6	47	26	2.2	40	33	5.9
KS	29	21	3.5	9	1	1.1	21	13	2.5	27	11	1.6
KY	24	19	5.2	4	0	1.0	16	11	3.5	16	8	1.7
LA	26	19	3.8	12	5	1.8	15	8	2.1	25	14	2.3
MA	8	5	2.4	9	6	2.8	0	-3	0.0	8	0	1.0
MD	39	23	2.4	14	-2	0.9	38	22	2.4	65	58	9.9
ME	0	-3	0.0	0	-3	0.0	0	-3	0.0	6	-5	0.5
MI	12	9	4.6	6	4	2.4	5	2	1.9	10	-1	0.9
MN	35	20	2.3	16	1	1.1	38	23	2.6	31	19	2.5
MO	45	33	3.8	9	-3	0.8	18	6	1.5	39	26	3.1
MS	21	9	1.7	12	0	1.0	0	-12	0.0	32	19	2.6
MT	13	0	1.0	18	4	1.3	80	67	5.0	43	30	4.7
NC	9	8	5.8	3	1	1.8	2	0	1.1	11	-1	1.0
ND	50	38	4.4	29	18	2.6	48	36	4.2	59	45	4.3
NE	11	6	2.1	8	3	1.5	34	29	6.3	14	4	1.4
NH	54	43	4.6	6	-6	0.5	29	17	2.5	22	14	2.9
NJ	24	19	4.4	12	7	2.2	8	2	1.4	24	14	2.5
NM	3	-3	0.5	5	-1	0.8	11	5	1.8	8	-5	0.6
NV	50	26	2.1	23	-1	1.0	84	61	3.6	57	50	4.0
NY**	6	2	1.7	2	-2	0.4	4	1	1.2	7	-2	0.8
OH	12	8	3.1	6	2	1.5	0	-4	0.0	13	1	1.1
OK	39	26	3.1	9	-3	0.7	17	4	1.3	28	13	1.9
OR	3	-1	0.8	4	1	1.2	2	-1	0.7	7	-5	0.6
PA**	81	60	3.9	51	31	2.5	43	22	2.1	81	67	5.8
RI	46	39	6.6	24	18	3.5	126	119	18.2	35	26	4.2
SC	46	29	2.8	11	-6	0.7	13	-3	0.8	51	41	4.9
SD	5	-5	0.5	25	15	2.5	80	70	7.9	54	43	4.8
TN	27	16	2.4	10	-1	0.9	8	-3	0.7	28	23	5.7
TX	38	29	4.5	18	10	2.2	14	6	1.7	49	43	7.4
UT	6	4	3.3	3	1	1.4	3	1	1.4	4	-8	0.4
VA	7	4	2.2	5	2	1.6	0	-3	0.0	10	-6	0.6
VT	38	31	5.8	0	-7	0.0	0	-7	0.0	20	11	2.1
WA	5	-5	0.5	17	7	1.7	16	7	1.7	25	14	2.2
WI	78	60	4.4	20	2	1.1	42	24	2.4	57	42	3.9
WV	22	19	7.4	4	1	1.5	0	-3	0.0	8	-3	0.7
WY	0	-4	0.0	5	0	1.1	32	28	7.4	7	-16	0.3

PINK SHADING = Above the average for all states

Data Source: U.S. Department of Education, 2015-2016 Civil Rights Data Collection (CRDC)

TABLE A5

School Arrests Compared to Enrollment for Black and Latinx Students and for Students with Disabilities (SWD)

STATE	Black % of State Enrollment	Black % of School Arrests	Black % of Referrals	Latino % of State Enrollment	Latino % of School Arrests	Latino % of Referrals	SWD % of State Enrollment	SWD % of School Arrests	SWD % of Referrals
NATION	15%	35%	30%	26%	24%	25%	12%	28%	29%
AK	3%	0%	5%	7%	0%	6%	10%	0%	21%
AL	33%	62%	54%	7%	5%	4%	16%	27%	25%
AR	20%	34%	34%	12%	18%	14%	16%	21%	21%
AZ	5%	10%	9%	45%	50%	48%	13%	24%	22%
CA	6%	19%	17%	54%	52%	55%	13%	26%	26%
CO	5%	13%	11%	33%	39%	39%	12%	15%	16%
CT	13%	28%	27%	23%	37%	33%	12%	37%	34%
DC	70%	92%	94%	16%	8%	6%	11%	31%	29%
DE	31%	49%	51%	16%	12%	14%	13%	29%	32%
FL	23%	44%	40%	32%	24%	22%	12%	30%	28%
GA	37%	59%	56%	15%	11%	10%	10%	25%	24%
HI	2%	2%	2%	12%	9%	9%	14%	29%	30%
IA	6%	29%	21%	10%	9%	10%	12%	26%	25%
ID	1%	1%	2%	17%	19%	24%	13%	22%	23%
IL	17%	41%	37%	25%	24%	29%	14%	33%	30%
IN	12%	26%	21%	11%	8%	8%	13%	30%	31%
KS	7%	20%	22%	19%	16%	17%	9%	32%	30%
KY	11%	37%	25%	6%	4%	7%	14%	29%	51%
LA	44%	73%	65%	6%	5%	4%	13%	16%	28%
MA	9%	19%	15%	18%	45%	33%	11%	36%	35%
MD	35%	57%	57%	16%	9%	16%	11%	29%	27%
ME	4%	0%	4%	2%	0%	2%	11%	29%	34%
MI	18%	46%	28%	7%	10%	7%	15%	26%	28%
MN	10%	26%	30%	9%	10%	10%	13%	30%	36%
MO	16%	44%	32%	6%	3%	5%	11%	30%	26%
MS	49%	63%	62%	4%	3%	2%	12%	22%	21%
MT	1%	1%	3%	4%	3%	4%	14%	22%	26%
NC	26%	61%	46%	16%	12%	15%	15%	33%	31%
ND	5%	13%	8%	4%	7%	7%	14%	39%	30%
NE	7%	12%	13%	18%	23%	21%	12%	29%	31%
NH	2%	9%	4%	5%	3%	3%	15%	26%	26%
NJ	16%	38%	33%	25%	30%	29%	13%	34%	33%
NM	2%	1%	2%	61%	54%	44%	13%	20%	23%
NV	10%	20%	23%	42%	37%	33%	13%	29%	27%
NY	18%	34%	37%	26%	13%	25%	15%	37%	35%
OH	16%	35%	27%	5%	5%	5%	13%	32%	31%
OK	9%	23%	19%	16%	10%	12%	14%	27%	26%
OR	2%	2%	3%	23%	27%	25%	14%	26%	26%
PA	15%	36%	39%	10%	16%	16%	11%	38%	34%
RI	8%	23%	23%	24%	36%	47%	9%	29%	22%
SC	35%	59%	55%	8%	3%	4%	12%	24%	26%
SD	3%	1%	8%	5%	7%	8%	13%	33%	29%
TN	22%	41%	28%	9%	6%	8%	16%	24%	21%
TX	12%	28%	24%	52%	55%	54%	10%	24%	23%
UT	1%	4%	4%	16%	22%	26%	12%	26%	25%
VA	23%	37%	42%	14%	17%	12%	17%	28%	30%
VT	3%	13%	9%	2%	0%	2%	13%	36%	37%
WA	4%	2%	10%	23%	37%	31%	17%	28%	30%
WI	10%	32%	24%	11%	9%	11%	16%	31%	35%
WV	4%	25%	8%	2%	2%	2%	12%	32%	23%
WY	1%	0%	2%	14%	11%	14%	13%	14%	25%
WY	1%	0%	2%	7%	11%	14%	13%	14%	25%

TABLE A6

School Arrests Compared to Enrollment by Gender, Race, and Disability

STATE	Black Girl % of Girl Enrollment	Black Girl % of Girls Arrested	Native American % of Girls Enrolled	Native American % of Girls Arrested	Latina % of Girls Enrolled	Latina % of Girls Arrested	Black + Latino Boys SWD % of Enrollment	Black + Latino Boys SWD % of Arrests
NATION	16%	39%	1%	2%	26%	22%	3%	12%
AK	3%	0%	23%	0%	7%	0%	1%	0%
AL	34%	72%	1%	2%	7%	2%	3%	14%
AR	21%	38%	1%	1%	12%	13%	2%	9%
AZ	5%	9%	5%	12%	45%	49%	4%	10%
CA	6%	22%	1%	2%	54%	52%	5%	14%
CO	5%	8%	1%	11%	33%	45%	3%	5%
CT	13%	32%	0%	1%	23%	39%	4%	20%
DC	71%	98%	0%	0%	15%	3%	8%	21%
DE	31%	51%	0%	0%	16%	12%	5%	15%
FL	23%	45%	0%	1%	32%	20%	5%	17%
GA	37%	63%	0%	0%	15%	9%	4%	13%
HI	2%	3%	0%	0%	12%	12%	1%	3%
IA	6%	34%	0%	2%	10%	5%	1%	9%
ID	1%	0%	1%	6%	17%	18%	1%	6%
IL	18%	47%	0%	0%	25%	21%	4%	15%
IN	12%	28%	0%	1%	11%	9%	2%	6%
KS	7%	19%	1%	3%	19%	23%	2%	9%
KY	11%	41%	0%	0%	6%	4%	1%	8%
LA	44%	80%	1%	0%	6%	4%	4%	9%
MA	9%	18%	0%	0%	18%	48%	3%	17%
MD	35%	60%	0%	0%	16%	7%	4%	14%
ME	4%	0%	1%	0%	2%	0%	0%	0%
MI	18%	61%	1%	2%	7%	6%	2%	9%
MN	11%	28%	2%	7%	9%	11%	2%	10%
MO	16%	50%	0%	0%	6%	4%	2%	9%
MS	50%	63%	0%	0%	4%	4%	4%	9%
MT	1%	0%	12%	62%	4%	3%	0%	1%
NC	26%	64%	1%	2%	16%	13%	4%	19%
ND	5%	16%	9%	30%	4%	10%	1%	7%
NE	7%	4%	2%	7%	18%	19%	2%	12%
NH	2%	10%	0%	3%	5%	7%	1%	2%
NJ	16%	41%	0%	0%	25%	29%	4%	16%
NM	2%	3%	11%	15%	61%	60%	6%	10%
NV	10%	17%	1%	6%	42%	40%	4%	10%
NY	18%	40%	1%	1%	26%	15%	6%	12%
OH	16%	35%	0%	0%	5%	6%	2%	10%
OK	9%	24%	15%	17%	16%	9%	2%	6%
OR	2%	0%	2%	0%	23%	45%	2%	6%
PA	15%	41%	0%	0%	10%	16%	3%	15%
RI	8%	22%	1%	0%	24%	51%	3%	10%
SC	35%	64%	0%	0%	8%	2%	4%	12%
SD	3%	0%	11%	52%	5%	8%	1%	1%
TN	23%	46%	0%	0%	9%	5%	3%	9%
TX	12%	30%	0%	0%	52%	53%	4%	16%
UT	1%	0%	1%	0%	16%	13%	2%	6%
VA	23%	37%	0%	0%	14%	20%	3%	13%
VT	3%	13%	1%	0%	2%	0%	0%	3%
WA	4%	1%	1%	3%	23%	41%	2%	7%
WI	10%	36%	1%	3%	11%	10%	2%	9%
WV	4%	32%	0%	0%	2%	6%	0%	4%
WY	1%	0%	4%	44%	14%	11%	1%	0%

Appendix D: Common Student Behaviors Leading to School Arrests

TABLE A7

List of 25+ Common Student Behaviors Leading to School Arrests

CRIMINAL CHARGE	STUDENT BEHAVIOR
Disrupting school	Spraying perfume;[118] fake burping; fake fart spray;[119] refusing to change a t-shirt depicting a hunting rifle;[120] not following instructions;[121] criticizing a police officer [122]
Disorderly conduct	arguing;[123] documenting bullying;[124] Kicking a trashcan;[125] cursing; refusing to leave the lunchroom[126]
Assault	Throwing a paper airplane;[127] throwing a baby carrot;[128] throwing skittles;[129] fake fart spray [130]
Weapons	Science experiment (volcano);[131] science experiment;[132] paring knife;[133] children's knife;[134]
Battery on a police officer	Five year-old with ADHD had a tantrum[135]
Terroristic threats	Eight year-old with a disability made a threatening statement to a teacher[136]
Drug possession	Carrying a maple leaf[137]
Petit larceny	Taking a milk carton[138]
Felony forgery	Buying lunch with a fake $2 bill[139]
Indecent exposure	Wearing saggy pants[140]

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68 National Association of School Social Workers, NASW Standards for school social work Services

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Racial Equity Together

K-12 Anti-Racism Action Plan

BRITISH COLUMBIA
Ministry of Education and Child Care

The Ministry of Education and Child Care acknowledges that its offices are situated on the Lək̓ʷəŋən territory of the Esquimalt and Songhees Nations and on the territories of the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), and səlilwətaɬ (Tsleil-Waututh) Nations.

The K-12 Education and Child Care sector carries out its work on the territories of the 204 First Nations communities across B.C., each with unique cultures, languages, legal traditions and relationship to these lands and waters. We also respectfully acknowledge and honour the Métis and Inuit people living in B.C.

The Ministry of Education and Child Care gratefully recognizes the honesty and vulnerability that so many students, staff, families, and community members have offered in sharing their stories, experiences, and ideas. The generous sharing of this lived and living experience has been foundational to the creation of this action plan. The ministry recognizes the personal stories as truths.

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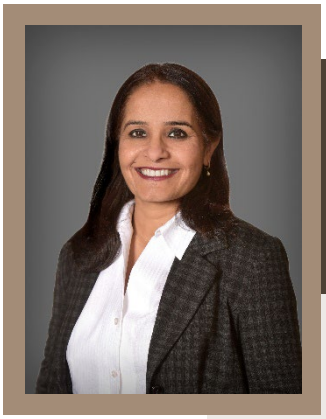

Message from
Honourable Rachna Singh
Minister of Education and Child Care

Much of what we learn during our time in school shapes us as adults. During these years, we begin to understand the fundamentals of learning and build the foundations of literacy and numeracy across all subject areas – Language Arts, Social Studies, Mathematics, Arts Education, and Science – to name a few. As we learn these skills, we also seek to strengthen our personal and social development in understanding our identity and place in society.

It is vital younger generations learn about racism and discrimination and how it has impacted – and continues to impact – people throughout B.C. By understanding the realities of racism and discrimination, we can continue on a positive path forward, with young people as part of the solution towards making a more equitable and welcoming province for everyone.

*"It is vital younger generations learn about discrimination and how it has impacted – **and continues to impact** – people throughout B.C."*

In B.C., we have taken several steps to recognize and address racism and discrimination head-on, both in communities and schools. In the K-12 education system, we have made changes to the provincial curriculum to support more Indigenous languages, cultural learning opportunities, and an increase to the number of social justice courses for students.

We have developed anti-racism training resources for teachers and ensured codes of conduct and policies are in place in all 60 school districts and independent schools. In addition, we have expanded **erase**, our provincial safety action plan, to provide more anti-racism resources for students and families.

I am pleased to release the K-12 Anti-Racism Action Plan as a key initiative to dismantle systemic racism and discrimination. It provides training and resources to help students and educators understand what it means to be anti-racist. By empowering students and educators with tools to safely stand against and respond to discrimination, this action plan will help create a province where all communities are celebrated and respected.

This action plan will help create a province where all communities are celebrated and respected

The action plan has been developed from dialogues, stories, personal reflections, and ideas shared by First Nations, Indigenous Partners, IBIPOC Community organizers, community organizations[1], education partners, and students through the Community Roundtables on Anti-Racism in Education and the Youth Dialogue Series.

I thank everyone who helped to inform this province-wide plan for the education sector so we can support a stronger culture of belonging for all students, staff and families in school communities.

Let us continue to stand up against racism and discrimination every day.

By truly acknowledging our past, and teaching about historic and current injustices and inequities, we can learn from our shared history, and embrace diversity and inclusion while creating ever-lasting change toward a future that is anti-racist.

Sincerely,

Rachna Singh,
Minister of Education and Child Care

*We can support a stronger culture of belonging for **all** students, staff, and families in school communities*

[1] *Community organizations are referenced throughout this document as a broad term representing a range of diverse and unique Indigenous, Black, and People of Colour identities including, but not limited to, multicultural, ethnic, and faith-based organizations.*

Message from
Honourable Mable Elmore
Parliamentary Secretary for Anti-Racism Initiatives

From an early age, our perspectives and values are shaped by our families, communities, and peers. The interactions we have with others, the interactions we see in our communities and in the media, as well as the teachings we receive from caregivers and educators impact our opinions and worldviews. This includes how we see our own place, and that of our peers, in society.

These experiences can empower young people to grow into confident leaders, mentors, and allies. For too long, however, not all British Columbians have been given the skills, knowledge, or opportunities to identify patterns of discrimination and racism in their communities. Educating students about B.C.'s and Canada's full history is a crucial first step in helping more people understand the power dynamics that continue to impact Indigenous, Black, and People of Colour. Only then are they equipped to identify and address overt and subtle racism where and when they see it.

When we share this knowledge with the youngest generations and support them to develop the knowledge, skills, and attitudes necessary for responding to racism and discrimination, we are creating a generation of future leaders with the confidence to build a more equitable province for everyone.

We know that this work is only one part of the puzzle. While we are investing in a bright future for our province through this K-12 Anti-Racism Action Plan, we are also addressing racism and discrimination happening right now.

We are creating a generation of future leaders with the confidence to build a more equitable province for everyone

Through the Resilience BC Anti-Racism Network, we're giving local organizations the tools they need to fight hate and respond to incidents of racism and hate in their communities. Through the Anti-Racism Data Act, we're working to identify and break down the barriers Indigenous and racialized people face when accessing government services. We're also developing a broader Anti-Racism Act that will further address systemic racism within government.

We have made important progress in dismantling systemic racism and there is more work ahead. We are committed to working across government and with all partners to build a better, more inclusive B.C. for everyone. Empowering the youngest British Columbians to be anti-racists will ensure these collective efforts continue for generations to come.

Sincerely,

Mable Elmore,
Parliamentary Secretary for Anti-Racism Initiatives

Empowering the youngest British Columbians to be anti-racists will ensure these collective efforts continue for generations to come

Vision

B.C. students achieve their full potential in an education environment that is equitable, free of racism and systemic barriers, and where all students, staff, and families feel welcome, safe, respected, and valued.

Introduction

Systemic racism and settler colonialism have shaped our province for generations, and this continues to hurt Indigenous, Black, and People of Colour in B.C. To help address discrimination, dismantle racism and make B.C. a more equitable, inclusive, and welcoming province for everyone, we are investing in anti-racism initiatives, such as the Anti-Racism Data Act, anti-racism legislation, and the Resilience BC Anti-Racism Network. To reaffirm this commitment, equity and anti-racism are foundational principles for all Minister's mandate letters.

The B.C. education system also holds great responsibility in addressing the systemic and interpersonal racism that continues to exist throughout the education system today. B.C.'s **Vision for Student Success** is for learners to develop their individual potential and acquire the knowledge, skills, and attitudes needed to contribute to a healthy society and sustainable economy. A necessary piece to achieving this vision is ensuring government and education partners listen and learn from Indigenous and racialized partners and communities to work collaboratively towards an education system that is free from racism and systemic barriers and promotes equity for all students. In July 2020, a **statement of support** for anti-racism efforts was released from the Minister of Education and B.C.'s education partners[2].

[2] *First Nations Education Steering Committee, First Nations Schools Association, BC School Trustees Association, BC Teachers' Federation, CUPE BC, BC Confederation of Parent Advisory Councils, BC Principals' and Vice-Principals' Association, BC School Superintendents Association, BC Association of School Business Officials and the Federation of Independent School Associations*

Racism and Mental Health

We know that racism has adverse impacts on young people and on their ability to thrive in society. As stated in the **Mental Health in Schools Strategy**, giving children the best possible start is key to better long-term mental health outcomes. Wellness promotion and prevention needs to be the focus, starting in the early years and spanning throughout a child's life. The effects of racism on mental health are well documented and have been consistently linked with higher instances of stress, poor health outcomes, and suicidal thoughts and attempts in youth.

Students, staff, and families representing Indigenous, Black, and People of Colour have been reporting experiences of interpersonal and systemic racism and oppression in B.C.'s education system for generations. Studies indicate that exposure to racial discrimination, particularly in youth, is a significant predictor of depressive symptoms.

We know that

> In 2018, 14% of racialized students, who completed the BC Adolescent Health Survey (BC AHS), reported experiencing discrimination because of race, ethnicity, or skin colour. This is an increase from 11% in 2013 (BC AHS 2013, 2018).[3]

> Three-in-five (58%) B.C. students say they have seen other students insulted, bullied, or excluded based on their race or ethnicity (ARI-UBC, 2021)[4].

> B.C. youth who experienced racial discrimination reported poorer health and well-being than their peers, including being less likely to feel hopeful for their future and to feel good about themselves (BC AHS 2018).

> Racial discrimination was also associated with poorer student mental health, including experiencing extreme stress and despair, self-harming, and seriously considering or attempting suicide (BC AHS 2018).

> A safe and supportive school environment, as well as the presence of caring school staff and feelings of being treated fairly, were associated with more positive outcomes among those who had experienced racism including feeling safe at school and feeling good about themselves (BC AHS 2018).

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*[3] The British Columbia Adolescent Health Survey (**BC AHS**) is a province-wide survey conducted by the McCreary Centre Society issued to youth in grades 7 to 12 every five years since 1992. The survey highlights health trends among students to help identify risks and protective factors. Special topic fact sheets are created on certain issues such as **racial discrimination**.*

*[4] The Angus Reid Institute (ARI) partnered with the University of British Columbia (UBC) to conduct **an online survey** from Aug. 24-27, 2021 among a representative randomized sample of 872 Canadians aged 12 to 17, whose parents are members of Angus Reid Forum.*

What We Have Heard

Over the summer months of 2019, the provincial government hosted community dialogues across B.C. to hear stories of racism and discrimination. Dialogue participants shared that acts of racism were on the rise, were adversely affecting more and more British Columbians, and these experiences were taking place in a variety of public sectors including education. Story by story, it became clear that many individuals and communities were deeply affected by historical and current acts of racism, and that communities were looking for provincial leadership.

A new Community Roundtable on anti-racism in education was created in July 2020 to support the development of an anti-racism action plan. The first Minister's Community Roundtable on Racism in Education hosted key participants in B.C., including Indigenous organizations and partners, community organizations, and education partners. The draft K-12 Anti-Racism Action Plan was developed in part from feedback received and stories shared at this Roundtable.

At the second Community Roundtable in 2021, participants expressed that racism towards their communities was on the rise. Participants noted that some of their communities were struggling to deal with the response to heightened levels of racist incidents with limited community capacity in order to support those affected. They identified that both immediate supports and long-term systemic changes in education were needed to achieve racial safety and equity. The Community Roundtables will continue on an annual basis to ensure the community conversation on racism in education continues.

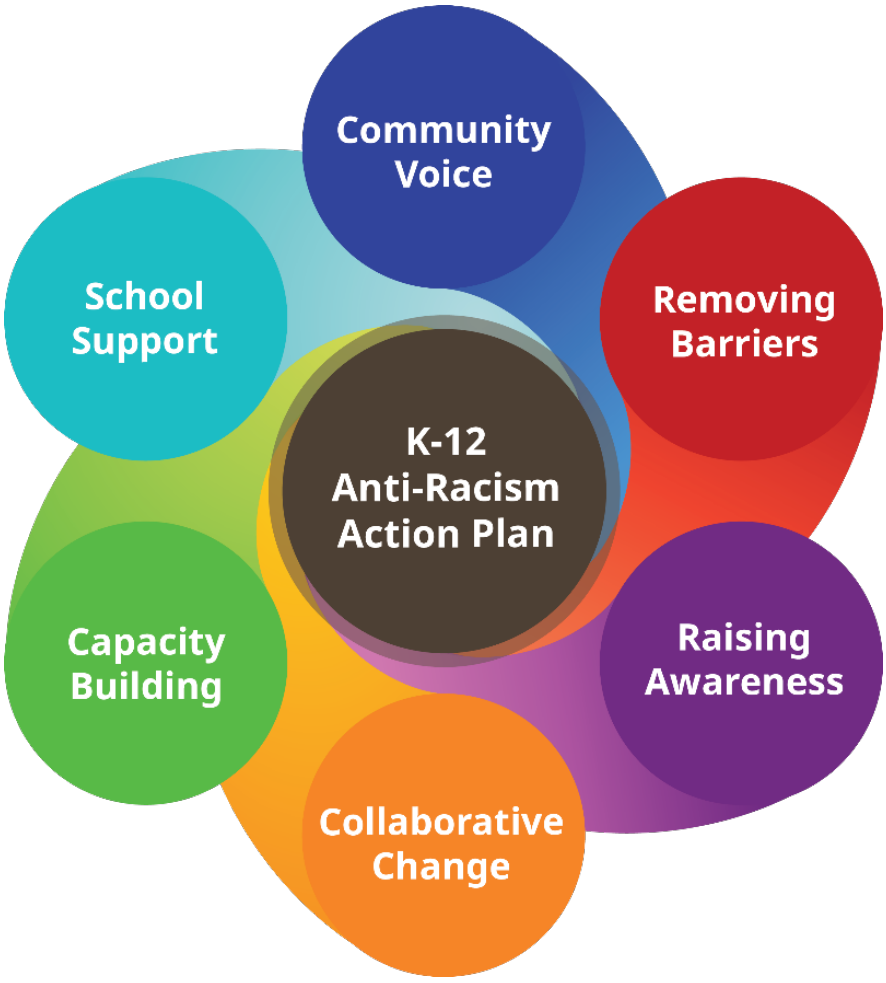
In 2022, Minister's Youth Dialogue Sessions were hosted for students in grades 7-12 from across the province to share their experiences of racism in B.C. schools. The stories and ideas shared by the students were key in informing how the ministry and school leaders can create anti-racist, equitable, and safe learning environments for all. The youth described how important it is that system leaders ensure caring and responsive opportunities for racialized students to share their stories and be heard by their teachers, principals, and district staff. This powerful dialogue series shaped the design and implementation of the K-12 Anti-Racism Action Plan.

The K-12 Anti-Racism Action Plan

The K-12 Anti-Racism Action Plan is a multi-year framework to specifically address racism and discrimination in education and to create a culture and climate of belonging for all students, staff, and families. This is the first phase of what will be many years of collective commitment to dismantle systemic racism in the K-12 provincial education sector.

The current plan is designed to improve outcomes for racialized students and support sector-wide understanding and growth of anti-oppressive systemic practises and content. The Action Plan provides supports and builds equity-based initiatives to start to address historical and oppressive barriers and ultimately lead to student success.

The Ministry is committed to Indigenous-specific strategies in the **Declaration Act Action Plan** for all Indigenous students. One of these strategies includes a First Nations Anti-Racism strategy led by the First Nations Education Steering Committee (FNESC) and supported by the Ministry.



Foundational Understandings

Although students' individual experiences of racism vary, racism holds all students back from truly thriving as individuals and communities. The following elements establish the foundational understanding of this Action Plan as we work together to move forward and stop further harm to racialized communities.

Indigenous Worldviews and Perspectives – There is growing understanding and acknowledgment of the mistreatment and disrespect that First Nations, Métis, and Inuit peoples have endured throughout Canada's colonial history. This harm continues in present day. The necessary commitment to truth, reconciliation, and healing must include the lens of understanding the connections and relationships that create holistic learning.

Affirmation and Recognition - Stories of racism and discrimination have been told time and time again. Moving forward, this strategy acknowledges these experiences without requiring those impacted to retell their stories and prove the harm that has occurred and continues to occur. These experiences are real, they are harmful, they are the truth, and they must be addressed in all contexts of K-12 education.

Equity and Inclusion – Students, staff, and families may have their own experiences of discrimination and oppression; however, the unique experiences of racism must be specifically addressed to create positive and system level change. Anti-racism cannot be addressed in siloes. Although the strategy is focussed on anti-racism, there is recognition that different experiences are shaped by the intersection of unique identities (e.g., intersectionality).

Adult Well-being – Racialized staff report experiences of racism in their school communities and working environments. The **Mental Health in Schools Strategy** emphasizes the importance of addressing the well-being of adults in the education system. In addition to effects on mental health, racism experienced by staff leads to issues with recruitment and retention, which further leads to less racial diversity in schools. This perpetuates racism further for students who do not see themselves represented in their leaders. Anti-racism initiatives must recognize the importance of supporting adults as well as students.

Principles

The K-12 Anti-Racism Action Plan is guided by the following principles as we move forward:

- Recognize and respect Indigenous rights and titles in accordance with Section 35 of the *Constitution Act, 1982,* United Nations Declaration on the Rights of Indigenous Peoples, Declaration on the Rights of Indigenous Peoples Act, and the Truth and Reconciliation Calls to Action
- Engage First Nations, Indigenous partners, education partners, community organizations representing racialized people, school boards, school communities, and students to work collaboratively, share voice, and integrate work across the sector and within the ministry.
- Amplify and defer to the voices and perspectives of those with lived and living racism experiences.
- Demonstrate humility and respect and a continuous improvement mind-set.
- Apply evidence-based decision-making reflecting current knowledge and data about anti-racism related systems-level change.

Priority Actions

The K-12 Anti-Racism Action Plan includes six priority areas of action: Community Voice, Removing Barriers, Raising Awareness, Collaborative Change, Capacity Building, and School Support.

Community Voice

Community Voice ensures that all actions in this plan are guided and co-led by First Nations, Indigenous partners, education partners, community organizations, and students with lived and living experience of racism. These voices have been missing, historically, from key conversations and decisions in government systems.

Annual Minister's Community Roundtable

An annual event for the Minister to engage directly with the IBPOC community to hear their experiences, perspectives, and recommendations on the Action Plan

Minister's Youth Dialogue Series

The Minister of Education and Child Care will host at least two Youth Dialogue Series: one for intersectional and diverse youth and one for Indigenous youth

Removing Barriers

Removing Barriers creates a system and communication paths to ensure racism cannot thrive through policy and culture.

Roundtable participants, as well as community and sector representatives, asked for more accountability to be embedded in the plan after the first draft, not just for ministry actions, but also for leaders in the system. They also shared the importance of communicating with parents and guardians on the action plan and progress, as well supporting resources to feel connected to their school community.

Anti-racism in district plans

Embed anti-racism reporting requirements within strategic plans

Parent Engagement Plan

A co-developed plan with BC Confederation of Parent Advisory Councils to inform parents of Action Plan initiatives and provide supporting details and information that will promote parent and guardian understanding and welcome their involvement in planning school anti-racism initiatives

Raising Awareness

Raising Awareness provides resources and engagement opportunities to highlight the unique identities and experiences across the province and how we can better appreciate each other, as well as to increase understanding of racism and its harmful effects.

Roundtable participants asked for a calendar to supplement district and school calendars to include more diversity as a first step to ensuring that schools reflect all identities as valued and important. Student-to-student racism was also identified as needing to be addressed, and that starts with foundational understanding of racism, equity, and inclusion.

Inclusion Calendar

Provide districts with a calendar identifying significant events of advocacy, celebration, or honour

Youth Engagement

Presentations and workshops hosted by B.C. Lions to grades 6-10 to explore and engage with issues of anti-racism, diversity, equity, and inclusion

Collaborative Change

Collaborative Change engages all layers of the education system to create system level change. It is imperative that the ministry, school districts, education partners, school staff, students, and families build on existing partnerships and create networks to champion anti-racism work.

Students have shared that only some school staff provide culturally safe and welcoming learning environments, and that is an everyday experience to be met with racism in their day at school in different forms. System level change requires the commitment of all layers of the sector to not only support this work, but also compel it.

Education Partner Collaborative

A committee of education partners, including Indigenous partners, to work collaboratively to address systemic racism

Educator Network

A committee for educators at both district and school level, built over phases, to provide peer support, build internal capacity, and identify needs to engage in anti-racism work

Capacity Building

Capacity Building creates the foundational understanding of racism for all staff in the sector, to recruit diversity in the workforce so that all students see themselves represented in school leadership, and to create a system that is welcoming to all staff.

Students have told the ministry of their hardship from moving through the K-12 system without seeing school leaders who represent and understand them. As well as watching Indigenous, Black, People of Colour (IBPOC) and allied school staff being treated with discrimination. In addition, educators and other school staff have shared the challenges of working in a system that does not feel welcoming and inclusive.

Recruitment and Retention Strategy

Grow diversity in the education workforce so that students see themselves in their teachers and have access to diverse role models through their educational journey
Create better working environments for IBPOC teachers to improve retention

Anti-Racism Training (for everyone)

Develop a foundational online training course available to a sector-wide audience including all ministry, school, and district staff
Develop additional professional learning opportunities to support specific roles and to build on foundational learning

School Support

School Support provides resources, support, and guidance for schools to create anti-racism learning environments.

Students have acknowledged the amount of time they spend in school in their young lives and the influence this environment has on their well-being and development. For students to thrive, they need to see themselves represented as valued members of the school community, as well as in their learning materials and content. They also need safe reporting processes for acts of racism. School leaders to receive those reports with understanding and action-oriented responses.

Incident Response Guidelines & Resource Guide

Develop resources to support districts and schools to identify and respond to incidents of racism, as well as define common terms to establish collective understanding
Develop a resource guide for the sector to provide recommended practices for implementing anti-racism work and ensuring learning environments are safe, welcoming, and inclusive

Curriculum Resources

Inventory existing anti-racism curriculum resources, identify gaps in the inventory, and address existing gaps in resources

Conclusion

The K-12 Anti-Racism Action Plan is a multi-year path forward and an opportunity to bring the education sector together to confront racism in all its forms, but it is only the beginning. This plan outlines the first three years of the provincial school community working together to establish a strong foundation and to chart a path forward for many years of continued dedication to come. This work must always include listening to students, staff, and families, and to be quick to adapt to shifting issues and experiences.

Everyone can play a role in identifying and addressing racism in the education system. System level change requires a shared understanding of our collective responsibility in dismantling racism in schools. Moving forward requires tough and uncomfortable conversations and a willingness to adopt new approaches to delivering education programs that ensure everyone in the school community know they are valued and important members.

The Honourable Murray Sinclair said, “Education got us into this mess and education will get us out of it.” The K-12 Anti-Racism Action Plan sets out to ensure that all students in the B.C. education system can learn in an environment where they feel welcome and valued so that school experiences can help shape a more inclusive and respectful society for everyone.

Appendix - Action Plan Timelines

Element	Action	Timeline
Community Voice	Annual Minister's Community Roundtable	Annual
	Minister's Youth Dialogue Series	Annual
Removing Barriers	Anti-racism in district plans	2022/23 and 2023/24
	Parent Engagement Plan	2021/22 and 2022/23
Raising Awareness	Inclusion Calendar	2021/22 and 2022/23
	BC Lions Youth Engagement	2021/22 to 2023/24
Collaborative Change	Education Partner Collaborative	Ongoing
	Educator Network	2021/22 – Phase 1 Ongoing expansion
Capacity Building	Recruitment & Retention Strategy	TBD
	Anti-Racism Training (for everyone)	2022/23
School Support	Incident Response Guidelines & Resource Guide	2022/23
	Curriculum Resources	2022/23

Greater Victoria Teachers' Association
5-515 Dupplin Road Victoria BC V8Z 1C2
t. 250.595.0181 f. 250.595.0189 info@gvta.net gvta.net

Via email

March 3, 2023

Board of Education
School District No. 61 (Greater Victoria)
556 Boleskine Road
Victoria BC V8Z 1E8

Dear Trustees,

Re: School Police Liaison Officers

The Greater Victoria Teachers' Association strongly recommends that:

> The SD#61 Board of Education end the School Police Liaison Officer Programs (SPLO) and establish a committee to establish an action plan on how to implement the recommendations put forward by the School Police Liaison Officer (SPLO) review committee [*on ending the program, see below for clarity],* enhance mental health services in schools, address violence in the workplace, and provide evidence-based, harm-reduction and trauma-informed programing on drug use, consent/sexual violence and all other programs currently delivered by SPLO's."

This decision is based on research conducted by the BCTF on the effect of SLO (School Liaison Officers) on teachers from marginalized groups, numerous reports from organizations and civilian review committees across Canada on the effects of policing on marginalized populations, and the recommendation from the BC Human Rights Commissioner to end SLO programs. This research makes it evident that SLO programs cause harm that negatively affects the safety, rights, and sense of belonging that many marginalized people (including Indigenous, Black, People of Colour, 2SLGBTQIA+, and people with disabilities) experience in school.

Public conversations over the last several years have highlighted that Canada's policing and criminal justice systems have been founded on and continue to perpetuate systemic racism. For our schools to take meaningful anti-racist action, we must not ignore this legacy, or the ongoing harm caused by police.

While school budgets have been drastically reduced over the last 20 years, police budgets in British Columbia have increased beyond the rate of inflation. Victoria Teachers and school counsellors are working in a chronically underfunded system

marked by insufficient staffing, inadequate resources, and an expectation to do more with less. In this underfunded system, police have, at times, been used to fill gaps in school supports, by taking on a variety of roles, including supporting the work of school counsellors. The presence of SPLO's not only harms many marginalized students, but also does nothing to solve the broader systemic issues caused by underfunding and austerity. For this reason, in addition to ending the SPLO program, our district needs to provide fully funded academic, social, health, and emotional support services in schools, enhance the rights of students and have clear and significant policy to govern any interaction schools may have with police.

It is important that as a district that supports the rights of all learners and seeks to advance equity, diversity, and inclusion, that we embrace policy that supports the marginalized members of our community by ending all SPLO programs, and creating the supports necessary to support all learners.

Specific Recommendations from GVTA For the SPLO Review Committee:

That the board end the SPLO programs due to current trauma-informed research on impacts of policing on Black, Indigenous, People of Colour (BIPOC), 2SLGBTQIA+, and people with disabilities, AND;

1) Focus on preventative measures for intensive behaviour such as early intervention by:
    a. Hiring appropriate professionals such counsellors, social workers, nurses, and behavioural support teachers to support complex needs of students.
    b. Properly fund EA's to keep retention rate of EA's to support at ground level.

2) Delivery of curriculum programs be administered by appropriate groups/organizations that present information based on research, from a trauma-informed, compassionate perspective that addresses structural inequities and power dynamics.

3) That administrators be directed to track the frequency, purpose, and intensity of all uses of police in schools and report directly to the superintendent and school trustees.

4) Establish thorough and sufficient policy to govern actions of all interactions with police in schools which includes:
    a. Complaints Process:
        i. A substantial and impartial complaints process specifically referring to police be established along with a dedicated ombudsperson at each school who will assist students and families with the process.

ii. That the complaints process be made clear to families in three situations during the school year (i.e., principal letter, school assembly, PAC meetings etc.) and to students in their classroom (by teacher).

b. That all schools develop discipline and behaviour management procedures that are based in trauma-informed research on impacts of BIPOC, 2SLGBTQIA+ students, and students with disabilities.
    i. That the district adopt an official policy that police not be used in instances of student behaviour management and that the district invest appropriately in school and mental health supports for situations that require intensive intervention.
    ii. Investing in creating safer schools without police by utilizing models of transformative and/or restorative justice and utilizing approaches outlined in alternative approaches to discipline overview https://mje.mcgill.ca/article/view/9547/7381.
    iii. That data be collected on race, ethnicity, ability, gender expression of students disciplined, and that if police are involved in any services provided to these students, that families are contacted within a month of receiving services to provide anonymous feedback on the experience of the process.
c. Student Rights:
    i. That the district take an active stance against criminalization of youth specifically with respect to the Youth Criminal Justice Act.
    ii. That the district adopt a restorative or transformational justice model for dealing with school related offences.
    iii. That police may not be used in the surveillance of students, nor have the power to arrest, detain, interrogate, question, fine or ticket students on municipal code, juvenile, criminal or immigration-related matters on school grounds.
    iv. On those rare occasions when it is appropriate for law enforcement to enter a school building, there should be agreements with police departments that limit the cases when law enforcement can be called into a school, with particular safeguards in place to ensure students' rights to education and dignity are protected, in addition to their constitutional rights to counsel and due process.
    v. That police not be used to perform well-being checks on students attending or not attending school.
    vi. That a lawyer or independent ombudsperson be appointed at each school for assisting students with navigating the criminal justice system and multi-jurisdictional sections if those services are required.

vii. That Regulation 5145 be removed and that administrators not be able to substitute as legal guardians in the matter of the questioning of students. Students interacting with the criminal justice system be provided a lawyer for the purposes of legal counsel and ensuring their rights are upheld.

d. Staff Training:
    i. That all school staff are provided with current, research-based information on the impacts of policing on BIPOC, 2SLGBTQIA+ students, and students with disabilities
    ii. That all district staff are provided in-service training on identifying personal implicit bias, as well as anti-racist and anti-oppressive training.
    iii. That all school staff receive in-service training in trauma-informed/antiracist approaches to behaviour management.
e. Police and School Community:
    i. That police not attend school functions particularly for events where their presence may be triggering for BIPOC folks such as Orange Shirt Day, Rainbow Day, and Pink Shirt Day.
    ii. That if police are brought in for the purposes of a class, all legal guardians of students must be notified 2 weeks in advance in writing and both legal guardians and students have the right to not attend these sessions without academic penalty.
    iii. Police may not wear their street uniform or carry guns on school grounds. Police must be thoroughly identified, as students and staff have a right to know when they are speaking with an officer.
    iv. That Regulation 5134.1 be removed and police not mentor individual or groups of students.
f. School Programing:
    i. That the District acknowledge the need for a diversity of people and perspectives to be brought into the classroom; the district should ensure there is funding and availability for members from community groups and organizations to present programming, with a special attention to BIPOC groups.
h. Future Review Processes:
    i. That the district take seriously the democratic concerns of having independent reviews of policing;
    ii. That police officers may not sit on any review committee reviewing any function of policing within schools.
    iii. Establish an impartial process for collecting data from the community that is trauma-informed, and is inclusive for all members of the community, particularly marginalized people, free

of barriers and safe to participate in for all consultative processes policing related or otherwise.

5) Mental Health and Social Supports in Schools:
    a. That the District staffing formula include a base-level of counselling, behaviour support, psychologist, inclusive learning support, and other forms of inclusive mental health and social supports necessary to utilize a proactive model of safe schools and behaviour management.

6) Anti-racism/Anti-Oppression:
    a. The District establish an official definition of racism connected to democratic and systemic racism.
    b. Adopt an official policy with budget line items for anti-oppression work.
    c. Acknowledge and validate the historical and ongoing violence perpetuated against BIPOC folks by police through a public statement.
    d. That this process be steered by BIPOC folks from staff, students, and community.

Sincerely,

Ilda Turcotte
President, Greater Victoria Teachers' Association
cc GVTA Executive Committee

Policing in Schools Project

Report to the Executive Committee
December 2022

BCTF Kids Matter Teachers Care

Acknowledgement of Traditional Territory

BC Teachers' Federation members and staff live, teach, and carry out union work on the traditional and unceded territories of the many First Nations peoples of British Columbia. We specifically acknowledge the unceded joint territory of the xʷməθkʷəy̓əm (Musqueam), səlilwətaɬ (Tsleil Waututh), and Sḵwx̱wú7mesh (Squamish) Nations on whose land the BCTF building is located.

Anti-oppression guiding principles

The following anti-oppression principles guided the work of the Policing in Schools Project Team. Before engaging with the report, they ask readers to reflect on the principles below, as a way to ground the conversation that is hoped will follow the report.

As a starting point, this research is grounded in a critical interrogation of the ongoing project of settler colonialism, and the ways in which various institutions have and continue to uphold settler colonialism, including (but not limited to) those of policing and education. Further, it's a project grounded in an intersectional lens (understanding that people experience simultaneous, interlocking forms of oppression) and is oriented towards making schools places that embody anti-oppression and decolonization. Thirdly, the research process design is one that meaningfully engages Indigenous perspectives, worldviews, and ways of sharing knowledge into all aspects of this project.

More specifically, the above guiding principles mean that:

- anti-racism must be grounded in Indigenous sovereignty
- anti-racism must be about redistribution of power
- equity must be grounded in reparations to historically marginalized groups and a recognition of the social location of each one of us within a settler colonial context
- class (socio-economic status) is a reality in all communities and explains differentiated experiences and responses to policing
- public education is a public good. Any person should be able to access education free from harm, violence, and trauma.

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Executive summary

Policing in Schools Project

From February to April 2022, 39 BCTF members who identify as Black, Indigenous, People of Colour (BIPOC) participated in the Policing in Schools Project. They discussed their experiences and perspectives on police in schools and shared their visions for creating and sustaining safe, healthy, and equitable schools for all students. The BCTF engaged an external facilitator, Vanessa Tait, a two-spirit Cree woman from O-Pipon-Na-Piwin Cree Nation, to lead Talking Circles with participants. BCTF members hold multiple views on this topic. Discussing police in schools within Talking Circles elicited a range of perspectives, experiences, stories, and emotions from participants. In this report, we have endeavored to honour participants' perspectives, treat their words with care and meaningfully represent the broad themes of their stories.

The goal of the Policing in Schools Project report is to support continued conversations within schools, locals, the BCTF and broader community about how to create and sustain conditions for safe, healthy, and equitable public schools. There are three key themes to prompt future dialogue:

- **History matters and continues to be lived**
  Understanding the historical role of policing in Canada and how the past impacts the present is a necessary starting point for a conversation around police in schools. Many participants feel uncomfortable, intimidated, fearful and unsafe with police presence in schools.

- **Student needs within a chronically underfunded public education system cannot be met by funding School Liaison Officers (SLOs)**
  BC teachers and school counsellors are working in a chronically underfunded system marked by insufficient staffing, inadequate resources, and an expectation to do more with less. In this underfunded system, policing has been used to fill gaps and police have taken on a variety of roles, including supporting the work of school counsellors. Many participants made clear that SLO presence not only harms

many BIPOC students, but also doesn't solve the broader systemic issues caused by underfunding and austerity. These require going beyond plugging the holes, expanding what's considered 'possible' to envision what schools can be—places that truly support all without harming any.

- **Schools that embody care and meet student needs are grounded in the community and connected to families** Safe, healthy, and equitable schools are fully funded schools, grounded in community, that embody a holistic approach to students' academic, emotional, social, and physical well-being. They are places where students' families and the community at large are part of school culture and influence day-to-day activity. They serve as a welcoming and inviting space for families and Elders. For many participants, particularly those most negatively impacted by policing, achieving the schools described above is not possible, and cannot be fully realized, if police are present.

BCTF Research would like to thank all members who participated in the Talking Circles and underscore the labour of BIPOC members who shared their stories, perspectives, and trauma to produce this research. A special thank you to Vanessa Tait for so graciously leading the Circles. BCTF Research would also like to acknowledge the tremendous contributions of the Project Team comprised of eight BIPOC identifying members who worked closely with BCTF staff and navigated a complex project methodology with thoughtfulness, curiosity, and courage.

What is the Policing in Schools Project?

The *Policing in Schools Project* brought together BIPOC-identifying BCTF members to discuss their perspectives and experiences related to police in schools, as well as their visions for creating and sustaining safe, healthy, and equitable schools for all students.

In the context of a growing awareness around police violence and systemic racism in policing as an institution, police presence in schools has come under increasing scrutiny. Various jurisdictions across Canada and the US have been re-examining school police programs, with specific attention to their impact on BIPOC youth. In some cases, the programs have been suspended or cancelled. The conversation around police in schools has been a source of intense debate within school districts and communities across Canada and the United States.

This project sought to contribute to the conversation around police in schools by centering the voices and experiences of BIPOC-identifying teachers on this topic. This research project engaged BCTF members in two ways. First, in spring 2021, BCTF Research created a Project Team comprised of BIPOC-identifying members to work alongside Research staff as co-researchers. Together, the Project Team and union staff identified research questions, chose the method of engagement, and collaboratively analyzed project data.[1] Then, from February to April 2022, members from three locals were invited to participate in virtual Talking Circles. In total, 39 BIPOC-identifying members participated.[2]

The practice and protocols of participating in the Circle created an opportunity to engage in a type of dialogue not possible in settler-dominated spaces. Talking Circle participants were asked how they see police present in their school communities, their experience with police in their school sites and how that relates to their teaching and working conditions, and how they see BIPOC students impacted by police presence in schools. The final question in each Circle asked participants to share their visions for safe, healthy, and equitable schools.

[1] A more detailed description of how the project team and staff worked together can be found in Appendix A.

[2] Each Circle varied in size (4 to 11 participants), and length (between 1 and 2.5 hours), depending on the size of the group.

Indigenous-led Talking Circles

BCTF engaged Vanessa Tait, a two-spirit Cree woman from O-Pipon-Na-Piwin Cree Nation, to lead the Talking Circles. Below are Vanessa's reflection and explanation of the Talking Circles in her own words:

"Tansi (Hello), it was an honour to sit and facilitate the talking circle with each and every one of the participants that had the courage to sit in these sessions. The spirit and intent of the talking circle is what guided this process. I learned a lot from these circles, and I am very humbled by the experience. Kínánáskomitinan (Thank you) to each and everyone for their gifts, truths, and knowledge they shared during this time."

"We began this journey in ceremony to honour the ancestors of the territory, where the facilitator provided a spirit dish, a prayer, and a drum song. This was to start in a good way, and to bring those good thoughts and energy into the virtual space and for this portion of the research project. The first Talking Circle was completed with the Project Team and this was done to ensure that the Talking Circle approach would be conducted in a way that was respectful to the entirety of the research project and there was a debriefing before continuing with the rest of the Talking Circles. Thereafter, each Talking Circle was started with an opening prayer and ended with a drum song, and the participants were encouraged to go for a walk or do some self care after."

"The Talking Circle is a traditional way of communicating and sharing, which has been practiced by Indigenous people here on Turtle Island and is a part of our traditional ceremonies and customs. The Talking Circle honours what the participants have to say in a sacred and safe space. An eagle feather was held throughout the Talking Circle, a sacred item that was gifted to the facilitator from a two-spirit relative. The eagle feather is to honour the Circle, the gifts, the sharing and the love and kindness the Circle represented. A smudge was lit and continued for the entirety of the circle. Each person's participation in the circle is a gift of value and is appreciated. In turn, everyone in the Circle receives each other's gifts with respect, neither judging nor belittling the gift each person makes. No person and the gift they share is more important than another, and each person's gift is necessary to complete the Circle. The Circle is a sacred space made up of sacred relationships."

Participant experiences and perspectives on policing in schools

Discussing police in schools elicited a range of perspectives, experiences, stories, and emotions from participants. BCTF members hold multiple views on this topic. BCTF Research staff and Project Team members analyzed the transcripts of the Talking Circles together and identified the following key themes.

History matters and continues to be lived

History informs the present. The conversation around police in schools must be put within a broader discussion of the role policing has served within a settler colonial context, with specific attention to the history (and ongoing reality) of militarized invasions of Indigenous land, forced removal and apprehension through residential schools and the Sixties Scoop, and the ongoing crisis of Missing and Murdered Indigenous Women and Girls (MMIWG). The historical role policing has played—and continues to have—within our settler colonial context has caused irreparable harm and created a deep mistrust that persists and impacts participants in multiple ways in their day-to-day teaching. **Understanding this context is a necessary starting point for a conversation around police in schools.** As one Indigenous participant shared,

> *"When I was invited to be part of this session, all I could think of was [Kent] Monkman's very large mural of RCMP, mothers and children, and them being snatched away—because the laws of our country allowed it. The laws of our country allowed our nations' leaders—our future children and our leaders to be taken away…I know that we call them [the police] and as a society believe we are safer with them around, but when you have history and historic information about laws and who carried out the laws and the people who are still carrying out the laws on our territories, because they are guided to—so when we talk of trust, the trust is not there…"*

"You have to reach in the past before you move forward"

"the police are not there to support everybody"

"we have to share this [history] so that people don't forget why the police were created. They weren't created to protect me. They were never created for that…."

Participants noted how both the law and policing land differently on groups of people, depending on their race, class, or legal status. Policing, as it currently exists, (and was created) benefits some and marginalizes others in society.

Ongoing police violence experienced within BIPOC communities makes its way into the daily lives of teachers and students, negatively impacting their teaching and learning conditions as well as their overall well-being. Many participants described feeling uncomfortable, intimidated, fearful and unsafe with police presence in schools. These fears were most strongly articulated by Indigenous participants. Some participants described how they try to go unnoticed and avoid encounters with police at school. Others shared that being in schools with police means they cannot fully be themselves in their workplace. Some shared their own traumatic experiences with policing in the past, disclosing how those negative experiences have stayed with them into adulthood.

"I just feel a lot of discomfort and I just don't feel safe. I have a lot of anxiety. I feel like I just kind of shut down, like I just- I don't feel safe in the presence of police. I don't want to interact with police. I feel really fearful of like other students of color interacting with police, or just like just like what their presence means and the implications of their presence…"

"When I had the police come into my teaching space, I was terrified, but I couldn't tell the kids. I could not tell the kids. I was so terrified when the schools had set up having police come in and do all of this. I was thinking, why do we need to have this?"

"I just try to stay under the radar—not talk to them, not engage. I would not feel comfortable having them in my classroom or around my students or in the hallways with me … when I see them, I feel small."

Several participants asked, "why do we have police in schools?", noting they weren't ever given a rationale for why police in school programs were created. Some shared that they sense police are placed in schools to help build relationships with youth, which they find concerning given the historical and ongoing reality of systemic racism and violence within policing in Canada. In some cases, SLOs had a dedicated school space or office, leaving some participants wondering why police were invited into school spaces more easily than other community members, such as Elders.

"[my students] have experiences on the weekends with the police and then they come to school and…it's almost like what they have to deal with outside of the school now comes inside of the school which is supposed to be a place of learning and supposed to be like a safer space for all students."

Several participants shared stories of how BIPOC students have been impacted. One participant told a story of a student being profiled and carded by police on their way to school, causing them to arrive late for class. Another shared of students experiencing mental health crises and witnessing overly aggressive responses by police which lacked compassion and sensitivity to students' trauma. Several participants expressed their desire to have a counsellor on site to help students work through their emotions as opposed to a police response which they fear could criminalize students for struggling with their mental health.

As the participant quoted earlier explains, "as a society we believe we are safer around them, but when you have history...," there's a discrepancy between how police are often portrayed in society and the lived experiences of fear, trauma, and lack of safety that participants shared. The Circles demonstrated how 'safety' and 'equity' are not universally understood or experienced. For example, in the context of some school districts cancelling SLO programs, some participants shared that no longer having access to police at their school site is a lack of safety and a form of inequity, as the pathways to getting students support are more arduous and cumbersome. For several school counsellors, the situation has felt like a removal of support and their inability to help students in a timely manner is an additional barrier. Other participants explained how they consider lack of safety and inequity as when people are not able to access a service or space due to fear for their safety. One participant provided an analogy of how schools address student peanut allergies by proactively removing peanuts from classroom snacks, and explained their vision of safe, healthy, equitable schools would mean proactively removing the potential harm of policing from students so that no student has to experience "an anaphylactic reaction to the presence of cops in schools."

Relatedly, several participants discussed safety and equity as creating a support system that truly helps all without harming anyone, pointing out that a "majority rules" perspective on what is safe or equitable can simply reinforce inequity and cause harm. Rather than go by what works for most (numerically), an equity lens should be taken whereby if one student is not feeling safe, then a space should be considered unsafe, and work must be done to create a solution that ensures safety for all.

As these examples illustrate, 'safety' and 'equity' carry different meanings informed by identity, history, lived experience and perspective. Attention to these differences is important for ongoing conversations and the work of building collective understanding.

"We talk about equity, also in terms of accessibility... not having a school liaison officer has created a barrier to those students who would have had access to a school liaison officer...hearing a student cry and talk and tell about their experiences, but then not have an avenue to go to other than the 911 or non-emergency line, that is that in itself is a barrier."

"If you're thinking about student experiences I think in terms of access, I think the most inequitable thing is that there's going to be groups of students, that will never ever be able to access police in a safe way... The feeling of some students feeling unsafe in their communities is not the same as someone who thinks they are going to die or be killed by the interactions with police."

"You just have to listen to one kid talk about what—how police treat them and, for me, as a teacher, if not one of my kids is safe, then it's not a safe space for any of them. So even if one kid is harmed, we need to make it a safe space for all of them, because we can come up with different ways to help our kids."

Student needs within a chronically underfunded public education system cannot be met by funding School Liaison Officers (SLOs)

BC teachers and school counsellors want the best for their students. Unfortunately, they are working in an underfunded system marked by insufficient staffing, inadequate resources, and an expectation to do more with less. Throughout the Talking Circles, participants shared how working in this underfunded system continually prevents them from being able to meet student needs. This was particularly clear in school counsellor perspectives. Many felt their efforts are "just a band-aid solution at best" as there is so much need but insufficient time, personnel, and support.

Participants described how police in schools have been used to fill gaps in this under-resourced system. Police have taken on a variety of roles such as providing presentations on bike safety, digital literacy, internet safety, and substance abuse awareness, mentoring and coaching student clubs, responding to emergency calls, and helping students file reports of assaults, to name some of the most prominent examples discussed. Participants pointed out how police are positioned as a resource for teachers, often the only 'community-based' resource they can draw on to teach about internet safety, digital media literacy or substance use in their classes. In the absence of resources, a few participants described finding themselves having to access the police even though it made them feel uncomfortable or at times guilty for not teaching through their anti-oppressive values.

"Even though,I'm a registered clinical counsellor it doesn't seem to matter in terms of how many hours... we have to service all the needs of students which can't possibly be met...if we were properly staffed and funded, then we could make more of an impact."

"There's so much stuff that you know, in an ideal world, they wouldn't have to do these jobs but there's so much that they do that fills gaps in the system for our students, you know... with mental health crises...providing a sense of safety, providing the school with really valuable safety information that we wouldn't otherwise be able to get..."

"We can't do our job because we're not staffed well enough."

"one of the things I realized as a teacher was that it was pretty hard to find resources that were not tied to the police in my school community....trying to bring in a counsellor, trying to bring in a community activist, all of those things were not something readily available, but what always was available was police...And kind of building resources that were not police specific fell on my shoulders."

Many school counsellors shared how their school-based SLO was an indispensable resource to them, and a vital form of support many relied on. They described how SLOs provided leadership skills and mentorship to students, along with support in times of distress. Several described feeling worried about their ability to help students without having access to an SLO. A few participants expressed torn feelings about the role of police in schools and the gaps they fill. They've witnessed students benefit from having access to an SLO and observed that some students do feel a sense of safety with them in school, but they also expressed understanding the traumatic experiences other BIPOC colleagues in the Circle had at the hands of police. These participants expressed a desire to find ways to support all students meaningfully and wondered how to hold or balance the positive experiences they've witnessed with the reality of the traumatic ones that other participants had shared with them.

"If I need to call 911, I'm going to wind up on hold for hours and I'm not going to get the results that I need for that student who is asking me for help."

"...the other things that are supposed to come in to replace or to help or to fill the void are just not there... nothing has come close to the timeliness to act ...as having an SLO officer that you can reach out to directly."

Many participants shared the view that police should not be tasked with filling gaps in public education, as has become their role. The path towards meeting students needs requires abundant funding that goes beyond filling the gaps. Schools require more counsellors, teachers, coaches, and other school support staff and a long-term view of meaningfully investing in supports and services. Participants made clear that meaningful change requires shifting from a scarcity mindset to one of funding public services like education more abundantly. As one participant explained,

> *"[When I think about] how stressed we are and how we can't support our children, you know this comes out of a world of austerity, about lack of people not having enough to get by to flourish, to grow, to heal, you know. We need abundance in school sites. So, yes, the police, provided a lot of services, but you know those cuts were made over the years. We need a fully-funded school system where we have enough counsellors, where we have enough safe and caring liaisons in the school. Where we have enough principals, we have enough teachers and teachers' aides and coaches and funded activities."*

As the participant quote explains, austerity has consequences. Within the Circles, it was also pointed out that the horizon of what is considered possible for creating schools that embody systems of support and care has been limited by decades of underfunding.

Often resources or supports are provided piecemeal and lack the systemic coordination and infrastructure needed to really make a difference. **Many participants pointed out that having SLOs not only harms many BIPOC students, but also doesn't offer a solution to the systemic issues caused by underfunding and austerity.** Creating safer schools requires going beyond plugging the holes towards expanding what's possible to envision what schools can be—places that truly support all without harming any.

The stories participants shared about living the daily consequences of underfunding add important context to the conversation around the inadequacies of BC's education funding. Education funding in BC is approximately $1,600 per pupil less than the national Canadian average.[3] In the 2019–20 school year, BC's school districts received only 65% of what they ended up spending province-wide on special education from supplemental special education grants received from the province.[4] Music and arts programs consistently face cuts and international student tuition has become a way for school districts to offset the insufficient funding they receive, reinforcing systemic inequities as not all school districts are able to attract students from abroad.[5] In addition, the current school counsellor to student ratios are too high to meaningfully address student needs, as participants made clear. School counsellor associations across Canada and the Unites States advocate for a ratio of 250 students per counsellor.[6] As of the 2018–19 school year (the most recent year for which we have data), provincial school counsellor to student ratios were 536.5 students to 1, illustrating that school counsellor ratios in BC are considerably higher than that target ratio.[7]

Placing the education funding conversation in BC within a broader context, the continual defunding of public education has been a trend in Canada (and globally) driven by a dominant political ideology of 'reigning in spending' and enforcing austerity on vital public services. As global protests ignited in summer 2020 (both as a response to the police killing of George Floyd in the US and to

[3] BCTF calculations based on Statistics Canada Number of Student Tables (37-10-0007-01) and Education Spending Tables (37-10-0066-01).
[4] Ministry of Education. Operating Grants Tables (2019-2020); Ministry of Education. BC School DistrictRevenue and Expenditure Tables (2019-2020).
[5] While increases to funding have been made in recent years, these are driven by inflation, collective agreements, and enrollment growth. Very little new money is being provided to meet ongoing challenges caused by chronic underfunding.
[6] The American School Counselor Association *https://www.schoolcounselor.org/About-School-Counseling/School-Counselor-Roles-Ratios*
[7] It is challenging to get an accurate school counsellor to student ratio for each school district due to lack of data transparency in the BC Ministry of Education. In November 2022, BCTF Research submitted FOI requests to obtain current school counsellor to student ratios in Burnaby, Surrey and Vancouver and is waiting a response.

highlight police violence as a global issue),[8] many activists pointed out that while programs and public services providing housing, education, mental health support, economic opportunity, and community-based violence prevention continually face austerity measures, police funding and resources have continually increased and taken up a greater share of local and municipal budgets.

In addition to documenting BCTF members' experiences and perspectives, the Policing in School Project examined general trends in police and education funding in BC over time. While education budgets and policing budgets are challenging to compare[9], a clear trend can be observed: over the past decade and a half, police funding has not been subject to the same austerity measures as education funding. For example, between 2006 and 2020, police resource costs in BC grew by 48.4%. These increases outstrip both population and inflationary increases. Meanwhile, the provincial public education operating grant grew by only 9% over that same period.[10] [11] Furthermore, the significant power difference between the police board and local school boards is worth noting. Police boards have the ability to ensure their funding requests are met as they have the power to override municipal councils. This was recently seen in Vancouver, where the city council voted against an increase to the Vancouver Police Department (VPD) budget, but the police board overrode the decision, resulting in VPD receiving a $5.7 million increase in funding in 2022.[12] School boards do not have similar power to override funding decisions. For more information about the budget analysis, see the Research Note examining police and education funding trends for more details.

[8] Across Canada, protests also demanded justice for those killed by Canadian police forces, including uplifting the names of Regis Korchinksi- Paquet, Ejaz Choudry, and many others.

[9] This is due, in part, to educational funding being allotted across calendar years while police funding occurs within the calendar year. Further, per capita police resource costs are based on the population at large, whereas education funding is based primarily on full-time equivalent (FTE) student enrolment in a district.

[10] An important note for interpretation: The public education operating grant is the largest and most predictable source of funding for the BC school system, but it is often accompanied by other grants (targeted funding for specific student populations, one-time grants for certain initiatives). Further, some school districts are able to attract international students and thus receive additional revenue from international student tuition. In contrast, the police resource costs are expected to be fairly complete.

[11] Ministry of Public Safety and Solicitor General Policing and Security Branch. Police resources in British Columbia (2006-2019); Ministry of Education. Operating Grants Tables (2019-2020); Ministry of Education.

[12] Fenton, C. (2022 April 12). Vancouver to draw $5.7M from reserve funds to offset police budget decision. CityNews. *https://vancouver.citynews.ca/2022/04/12/vancouver-tax-police-budget/*

Schools that embody care and meet student needs are grounded in the community and connected to families

Participants described safe, healthy, and equitable schools as fully-funded schools, grounded in community, that embody a holistic approach to students' academic, emotional, social, and physical well-being. They are places where students' families and the community at large are part of school culture and influence day-to-day activity. They are not cut off from the broader community in which they are situated and serve as a welcoming and inviting space for families and Elders. Such schools are designed to meet the needs of the most vulnerable in their community. They nourish students, providing them ways to be and learn "in all the ways that learning can happen," as one participant shared.

> "For me, safe, healthy and equitable schools can only happen if our community is involved, and by that, I mean families need to be part of our school community... Our schools have to be very, very safe places, for every child in the building and one of the ways, I feel that can happen is by having a very close interaction with families and communities."

Safe, healthy, equitable schools are equipped with smaller class sizes to work with students where "we can actually have conversations and decolonize," as one participant explained. Several mentioned a need for increased staffing, particularly more BIPOC-identifying teachers and counsellors to work with students. Others described schools that nurture learning holistically, feeding the hearts of students. Relatedly, others envisioned places grounded in restorative and transformative approaches to conflict resolution and problem solving, breaking away from carceral mindsets and punishment-oriented approaches that some noted still exist in their schools. For many participants, particularly those most negatively impacted by policing, achieving the schools described above is not possible, and cannot be fully realized, if police are present.

Transformation involves creating and sustaining conditions for members to not only envision but enact their visions for safe, healthy, and equitable schools. Some participants shared that they unfortunately still experience barriers in school policies that prevent them from welcoming Elders into their schools or incorporating ceremony in school functions or activities. This example highlights the discrepancy that still exists between rhetoric and the reality of genuinely incorporating Indigenous ways of being and learning into BC's public education system.

"Where I feel good and really safe is in schools that are kind of known as community schools... So, like the families can come in and you'll see grandparents sitting there on the couches, you know, and talking and they always have food available there. They sometimes have days where certain members of the community will cook like they have, you know, special food days and then also they always have bread and things for the kids and it just feels like more down to earth."

"...the way that we are sort of there in that space is really guided by anti-oppressive values and beliefs and people are trying to create an environment that's not like this carceral sort of like culture about like punishment and punishing students...so creating a culture where it's like restorative and transformative. How do we actually address what the root causes of harm [are] rather than like sticking a band-aid on it or, you know, just like barely scratching the surface or actually doing things that like further harm?"

"I wish we could just flip our model and design our schools to support the folks that don't have those resources because if you provide schooling that works for folks with the least or marginalized people, you don't lose anything as a privileged person—I mean you probably gain way more because, you know, your access is not the thing that's in focus and I think there's a lot... we can learn from in terms of humility."

"I believe that schools are supposed to be sites of care and only care, we are not, as teachers, there to punish students to mete out some weird form of justice. We're not carceral but why are we inviting in police who are carceral, who legalize violence within our society into our schools, these are supposed to be caring safe places, you know, I only see schools as a site of abolition."

Continuing the conversation: Providing the space and support

"...especially in BC with curriculum that it's supposed to talk about decolonization and talk and teach with Indigenous perspectives, like from Indigenous perspectives. It's—I can't do it honestly without talking about the police or anti-racism and all that..."

"...how I feel in this situation is that there isn't enough education for us educators to address the issue of policing in school"

"there doesn't seem to be a professional climate to have open conversations [about policing]"

"there's a lot of *harm* in schools... it's just really disheartening and it's so sad and frustrating that we can't even be having these conversations at a whole school level, that someone can't just say, "Hey, this is something that's bothering me—the way that the police showed up at my school. It made me feel really uncomfortable. Like, can we do something about this?" I don't even think we have an environment where people can really even feel safe to say that and if people can't feel safe enough to speak up then we can't take action on these things either."

"and I often feel like –I don't know if others share those same feelings, especially if you're in a school with like just other white like colleagues or white teachers, like, I often don't voice my opinion because I don't know how that's going to be received or if it will further kind of isolate me. "

Participants of varying perspectives acknowledged the contentious nature of this topic and discussed how it has and continues to be polarizing amongst colleagues. Several discussed the need to create a more supportive atmosphere where members can talk openly within schools and union spaces about police violence. For some participants, having more professional and collegial support to discuss policing in society at large as well as in schools would help them feel better equipped to engage in the topic within their schools and classes.

Several participants shared how this issue has impacted their collegial relationships. For example, some participants working as school counsellors expressed that they did not feel adequately heard or consulted on this issue in their district. Other participants shared experiences of feeling discomfort around police at school but not having a safe avenue for honestly discussing their feelings amongst colleagues. Some disclosed that they self-censor on the topic of policing for fear of how other colleagues—in particular, White colleagues—are going to respond. Within this context, important questions to consider include: How has the struggle for resources and the experience of working in an underfunded system affected collegial relationships amongst K–12 education staff? How can union and school spaces be created to foster dialogue and build understanding and solidarity on this issue?

The Project Team and Research staff have endeavored to honour participants' perspectives, treat their words with care and meaningfully represent the broad themes of their stories. The Policing in Schools Project report is not meant to serve as a "final analysis" on this topic. Rather, an intention of this project is to support continued conversations within schools, locals, the BCTF and broader community about how to create and sustain conditions for safe, healthy, and equitable public schools.

Appendix A: Project journey

In this Appendix, we (Michelle and Joni) write about our project journey and describe how we as a team worked together with members and attempted to build critical reflection into the project by continuously asking: who is given space and how, and whose voices are centered? Michelle, senior researcher, identifies as a White settler and Joni, research assistant, identifies as a settler Person of Colour.

The *Policing in Schools* project took place over two years and engaged multiple governance structures, members and staff within the BCTF. The project was initiated by a motion put forward and passed at the December 12–14, 2019, BCTF Executive Committee (EC) meeting: "That the BCTF study the impact of policing on school communities." Over subsequent months, BCTF Research staff conducted a literature review of the topic and presented key findings and avenues for further study to the September 18–19, 2020, EC meeting. At that meeting, the Executive Committee passed the following motions: "That the Federation do an analysis of police and education budgets across BC" and "That the Federation undertake a research project that explores the experiences of British Columbia Indigenous, Black, and People of Colour educators and students in relation to school liaison/school resource officers."

An integral component of BCTF Research is engaging members as researchers to investigate issues that matter to them at their schools, in their union, or within the broader community. When this project came to our office, we knew we wanted to take a participatory approach, involving members in the research process in multiple ways. With the above EC motions as the guide, we provided the initial project scope. While policing in education is a topic that spans the province, through discussion with other Research staff, we chose to focus the project analysis on three school districts, which either currently have or have had police programming in their schools. Next, Michelle reached out to locals to discuss the project with local leadership.

To ensure this project was guided by members, we created a project structure consisting of a Project Team of BIPOC-identifying members to be co-researchers alongside us as Research staff. We then shared a "Call for Participants" with the participating locals (through consultation with and support from local union leadership) and relevant BCTF committees.

After an application review process, the Project Team was assembled, and we began the next planning steps.

Between April 2021 and May 2022, we brought the Project Team together on six occasions for full-day work sessions to collaboratively develop the project focus and framework for engagement. One key principle guiding the project work was to create a research process design that meaningfully engaged Indigenous perspectives, worldviews, and ways of sharing knowledge into all aspects of the project (Smith, 2012; Wilson, 2008). The Project Team proposed using Talking Circles as the form of research engagement (Barkaskas & Gladwin, 2021; Kovach, 2010; Tachine, Yellow Bird & Cabrera, 2016).

Once the research engagement approach was decided, the Project Team determined the best approach would be to engage an outside Indigenous-identifying community-based facilitator to lead the Talking Circles. Throughout summer and fall 2021, Michelle held multiple meetings with Vanessa (the facilitator) to plan the Circles and ensure all the necessary preparations were in place. Michelle and Joni also created and shared informational posters with the locals to recruit participants for the upcoming Circles.

Attention to our identity and positionality as staff was integral to this project. To ensure the Circle dialogue process unfolded in a BIPOC-only space, Michelle was not present during the sharing in the Circles. Her role consisted of welcoming participants to the Zoom session, providing project context, introducing the facilitator, and answering any questions. Joni attended each session entirely and managed the audio recording and provided tech support when needed. Further, to ensure the analysis of the transcripts centered the voices of those most impacted by colonization and systemic racism, Michelle and Joni brought the Project Team together for a two-day meeting in May 2022 to analyze the data collectively. Michelle and Joni prepared anonymized transcripts of the Circles and facilitated a range of activities and discussion questions to help guide the co-analysis of the transcripts with Project Team members. Then, once the key themes were distilled from our May meeting, Michelle utilized the materials from the two-day session to inform and write the current report.

Further, building critical reflection into this project encompassed thinking deeply about how we are engaging with members as well as the broader community. Two specific examples around process of engagement emerged.

The opportunities and limits of a virtual format

Due to the COVID-19 pandemic, the Circles took place virtually. While necessary given the circumstance, participant experience was impacted by the platform. In a post-Circle debrief, participants from the Project Team expressed how the online environment made it challenging to feel a sense of connection to other participants sharing their stories.[13] In every Circle, participants shared their vulnerability, disclosing traumatic life and work experiences with others. The way each participant chose to be present in the Circle was respected. For some participants, it felt more comfortable to have the camera off or read from prepared notes when speaking. If the Circles were held in person and the option to remain off camera would not have been a possibility, would the dynamics of some Circles have been different? In addition to the technology impacting the experience during the Circle, there were also impacts beyond. With each participant logging on individually, there was little opportunity for collective healing without a community present to debrief or support each other once the Circle officially concluded. While Vanessa generously provided her contact information to participants should anyone need to debrief the experience, the role of communal support provided with an in-person event was highlighted as necessary for collective processing of all that was shared in the Circles.

Meaningful engagement with First Nations on whose land the BCTF building is located

Making land acknowledgement statements is an important practice used to advance decolonization within BCTF spaces. However, as we discussed with the Project Team during data analysis, meaningfully putting words into practice requires reorienting commonplace protocols and building relationships. In planning the Circles, an important element of making the land acknowledgement process more meaningful was to connect with an Indigenous Elder from the territory on which the BCTF building stands to formally welcome those attending the sacred ceremony

[13] To ensure the perspectives of the Project Team were included in the data analysis along with other participants from the locals, they held their own Talking Circle with the facilitator.

and officially open the Talking Circle series. After attempts to reach out, we were not able to engage an Elder, prompting us to modify the acknowledgment protocol. Stepping back to critically reflect as a team, “Why weren’t we able to honour this protocol?”, we as Research staff together with Project Team members discussed the need for establishing a meaningful relationship with the local First Nations communities. Moving forward, one implication of this project is to encourage deeper conversations about how to move away from words of acknowledgement and towards meaningful recognition of and relationships with the Indigenous peoples upon whose territories union work takes place.

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BCTF BC TEACHERS' FEDERATION

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TFEU
November 2022
RT22-0004

OFFICE OF THE CHIEF CONSTABLE
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March 23, 2023

Board of Education
School District No. 61 (Greater Victoria)
556 Boleskine Road
Victoria, BC V8Z 1E8

Dear Trustees:

On Monday, March 13, 2023, you received a letter from the Greater Victoria Teachers' Association (GVTA) regarding the School Police Liaison Officer (SPLOs) program. As you know, I presented to the Board of Education on March 13, 2023 in response to that letter.

The purpose of my correspondence today is to further elaborate on my position about this important issue. I continue to be very concerned about the contents of the letter from the GVTA. I would like to clarify the role of the SPLOs and other police presence in schools, as well as address some of the grossly inaccurate statements and assertions that were made as they are not reflective of the local reality.

The GVTA letter implies that the SPLO Review Committee has recommended ending the SPLO program. My understanding is that the Review Committee put forward two options to consider: end the program or continue the program with changes. You may not be aware, but the majority of the Review Committee members want to keep the program and implement positive changes. Keeping the program with changes is also consistent with the results of the extensive survey conducted by the Review Committee.

It is important to understand the current role that SPLOs undertake in schools. The GVTA letter paints a picture of officers surveilling students and patrolling hallways waiting to make arrests, which is simply not true. The SPLOs are there to build positive relationships and trust with students which organically allows officers to be viewed as positive role models. These positive relationships are important in keeping students safe, and reduces the exploitation of youth, including sexual exploitation, which is increasing specifically amongst young men. It also helps prevent sexual violence, and recruitment of youth into gangs, which is a rising concern in Greater Victoria. Police are also in schools to promote student and community safety, which consists of creating school lockdown procedures, and assisting with lockdown drills, much like the role the Fire Department plays in fire drills.

It should be noted that SPLOs as are not posted to one particular school, nor do they necessarily spend their entire shift at one school. They are assigned to multiple schools with flexible schedules so they can customize the level of engagement required based on the needs of the students and the preferences of the teachers and/or school leadership. As a result, SPLOs might attend several schools once a week for short periods of time, or attend a few particular schools a few times a week for longer durations. While in schools proactively, the officers are approachable for teachers and can be consulted on potentially worrisome behaviours that are not criminal, but are beyond the capacity of teachers and counsellors to manage. Police are often invited into schools and classrooms of all ages for a variety of reasons. I can give you countless examples of the positive experiences that take place with not only our SPLOs, but our Community Resource Officers (CROs) as well.

When youth have a positive relationship with a trusted adult, they are more likely to disclose concerning activities, which helps us take action to end criminal behavior aimed at youth. Officers are selected to be SPLOs based on their ability to build positive relationships with youth, be positive role models, and are genuinely committed to the well-being of students.

In addition, the generalized stereotypes, outdated perceptions, and sweeping prejudice against police in this letter is unfounded, biased, and inaccurate. In fact, I find this letter extremely offensive.

One critical point in both this letter, and the BC Human Rights Commissioner's letter that is referenced, is the acknowledged lack of Canadian research around the impact of SPLOs in schools. There is very little research that reflects the reality of our communities, our relationships and our justice system, and the recommendations in this letter are based on a false belief regarding the role of the SPLOs in Greater Victoria.

The SPLO Review Committee survey, which was conducted locally, better reflects my understanding of the reality of police relationships with youth, and the desire our community has for police officers to be in schools. I understand that the survey had a significant level of participation from students, former students, teachers, parents, administrators, local First Nations and other community members, which further validates the survey results. I hope that the Trustees will carefully review and consider the SPLO Program Review Engagement Summary Report before making any decisions about this program.

From my own experience engaging with BIPOC communities as a BIPOC parent and police officer, as well as a former SPLO, I can say with a level of certainty that the contents of the GVTA letter do not reflect what our BIPOC communities want for our students. I hear the concerns expressed in this letter, and acknowledge that it is important to hear all voices in this discussion, but I do not believe that this is the will of our communities. Removing police presence from schools in such a sweeping manner, as called for by the GVTA, is irresponsible, based on a false belief, and would negatively impact the safety and well-being of students.

Thank you for your consideration.

Sincerely,

Del Manak
Chief Constable

Please feel free to share my letter with your colleagues and Board.
Thank you.
M. KELLY

Dear Mr Parmar and Board Members,

I would like to thank Mr Parmar for expressing his views and positive experiences in relation to the Police School Liason Officers that work with your School District, as detailed in today's Times Colonist article by Jeff Bell.

Officer Manak's comments and actions reinforce my view that our dedicated and hard-working Police Officers want only the best for our children. Consequently, their presence in our schools and relationship building with our students is very important in teaching our children about the danger of drugs and gangs, the importance of law and order, and who they can turn to in times of trouble.

"A Police Officer is your friend", and is one of the first people to whom we all turn in times of trouble. It is essential that our children understand this and have that message humanized and reinforced via kind, caring, committed Liason Officers such as Manak and his team.

Furthermore, an Officer's uniform is an integral component of their role, similar to a Fireman, Pilot, a Doctor's white coat, a Paramedic... and helps children to recognize them.

It is very troubling to consider what possible agenda the GVTA is promoting through their letter. It is certainly not a child-centered agenda that puts each child's best interest as the primary determinant of each decision.

I would also be very interested in seeing "the evidence" to support the GVTA position. I suspect it's quality and relevance to our community is lacking.

And to insult Officer Manak and his Officers with unsubstantiated claims of systemic racism is hurtful, hateful and such a betrayal to all those selfless and brave Officers who put themselves in harms way each day for our safety and well-being.

Please remain firm and courageous against any of this despicable rhetoric from the GVTA and "the vocal woke minority", who are pushing this devisive and harmful agenda.

Please know that you are on the right side of history and that the majority of parents and community members agree with you.
Our children's futures literally depend on your words and decisions.

Thank you, once again, for your efforts on behalf of our children.

Mrs Mary KELLY
122- 75 Songhees Road
Victoria BC V9A 7M5

From:	Jeff Duyndam
To:	Trustees
Cc:	Deb Whitten
Subject:	FW: School Police Liaison Officer Program
Date:	Thursday, April 20, 2023 3:24:01 PM

From: Tillicum Parent Advisory Committee <tillicumelementarypac@gmail.com>
Sent: Thursday, April 20, 2023 3:09 PM
To: Jeff Duyndam <jeduyndam@sd61.bc.ca>
Subject: School Police Liaison Officer Program

Hi Jeff,

Can you please forward this email below to the Board on behalf of the PAC? Thank you as always.

Dear SD61 Trustees,

I am writing this letter to you on behalf of the PAC for Tillicum Elementary School (SD 61) as it has come to our attention that the school district is about to make a monumental decision to no longer allow school police liaison officers on school grounds.

We are writing to express our complete and total opposition of this decision. As a school with a diverse population of students and families with complex needs, Tillicum has greatly benefited from the SLO program. The relationships our students have built with our SLO, starting in kindergarten, is critical in teaching them that police are here to help and not to be feared. How will this relationship building be replaced when these positive role models in law enforcement are removed from our schools?

When our SLO arrives onsite, our students flock to him - always excited to engage and chat. My son (who is now in grade 4) and his friends still talk about a funny and positive interaction they had with our SLO at our meet the teacher night in kindergarten. Clearly that left a positive impression for those kids, something that has helped shape their impression of law enforcement. The incredible experience our school had last year when our principal participated in the Tour de Rock program further excited and energized our school community, building upon the positive relationship building done onsite by our SLO. These healthy relationships that our students have built with law enforcement officers will be stripped away if they only see police in emergency situations. This is very concerning!

There is a great deal more that our school benefits from beyond the positive role modeling and relationship building that happens with our SLO. Our families are supported if and when the needs arise and our SLO is always available and quick to provide guidance in a myriad of situations. Our SLO has come onsite at a moment's notice to help assist with our ongoing traffic safety issues around the school (this really should be a focus for the school district rather than a review of a long standing and positive program like SLO especially since one of our cross guards was almost hit

yesterday). Additionally, they help out with our breakfast program, volunteer on a weekly basis to pick up bread donations and bring them to the school for our food programs and so much more. Who will we now turn to for this support?

We recognize that not everyone in our community and school district have a positive relationship with law enforcement. So I ask you, what better place to teach young children about the important work and positive relationships they can have with police officers than in elementary school? Where else can children develop a personal relationship with law enforcement officers in a safe and familiar environment like school?

We were greatly concerned when we heard this program was being reviewed and potentially being removed and are beyond disappointed to hear that this may actually now transpire. Our PAC has carefully followed along during the review of this program and encouraged our parents to share their input and thoughts to ensure that our voices were heard to try and fight to keep this program in our schools. It seems our efforts have fallen on deaf ears. Please reconsider this decision and think about the lifelong impacts taking such a positive program out of our schools will have on our students.

Thank you for your time and consideration of this extremely important matter.

--
Lisa Connell
PAC Chair
Tillicum Elementary School

From: Jeff Duyndam
To: Trustees
Cc: Deb Whitten
Subject: Community Liaison Officers...
Date: Thursday, April 20, 2023 3:25:21 PM
Attachments: image001.png
image002.png
image003.png

SD61 Trustees,

I have just met with our Staff Committee and we wish to express our support for the School/Community Liaison Program with Saanich Police. We have heard the program could potentially change or be cut and we believe this would negatively impact our school community. We have a proudly diverse population at Tillicum. Here are just a few examples of what this program adds to our Learning Community:

- Cst. Dion Birtwhistle is a positive role model for our students, building trust and a positive relationship between law enforcement and our community.
- Cst. Dion Birtwhistle regularly walks out onto the playground and swarms of students run to him hugging and high-fiving him.
- Cst. Dion Birtwhistle is regularly seen playing basketball with students reinforcing ideas around fair and inclusive play.
- Cst. Dion Birtwhistle delivers bread to our school on a weekly bases and volunteers in our breakfast program.
    - On "bread days" our CLO is seen chatting with kids and families as students rush over to see him with big smiles.
    - Staff, students, and parents regularly thank Dion for bringing bread to our school.
- Our CLO also leads our bike and road safety programs.

We believe that when implemented correctly, CLOs play an important and positive role in the lives of students.

A letter from our teachers is soon to follow.

Jeff Duyndam
Principal, Tillicum Community School
Greater Victoria School District No. 61
Ph: 250-386-1408 Fax: 250-380-2805
tillicum.sd61.bc.ca | @TillicumTBirds

SAANICH POLICE DEPARTMENT
Chief Constable Dean Duthie

April 17, 2023

Board of Education
School District No. 61 (Greater Victoria)
556 Boleskine Road
Victoria, BC V8Z 1E8

Dear Board Chair and Trustees,

I am writing to you in response to the letter you received from the Greater Victoria Teachers' Association (GVTA) regarding the School Liaison Officer (SLO) program, on March 13, 2023. As you know, the Saanich Police Department has maintained a consistent, formal, and meaningful connection with schools in School Districts No. 61 and 63 for several decades, and these relationships have proven to enhance trust, confidence, safety, and responsibility in our community and region.

The Saanich Police Department has been actively involved as resources to the SLO program review committee since 2021. During this time, we have made concentrated efforts to ensure that the issues and concerns were being presented accurately and impartially. As an example, an informative letter was prepared and distributed to the School District 61 School Liaison Officer Ad Hoc Committee on November 30, 2021, as attached. The letter, authored by Inspector Darrell Underwood, a leader within the Saanich Police Department and community, unfortunately did not result in any discussion by the committee. That said, it is my understanding that the Review Committee identified three options for consideration, ending the program, continuing the program with changes, or making no changes.

The information outlined in the GVTA letter does not accurately reflect information that we continue to receive from school administrators, staff, and students. I understand and appreciate that there are differing opinions, concerns, and perspectives, however; the tone and tenor of the GVTA letter creates a misleading narrative that has questionable support. The personal feedback that we receive from school administrators and students is contrary to what

the GVTA claims. A very recent and strong example of the trusted relationship between students in the Greater Victoria region and police is the overwhelming success of the Greater Victoria Police Foundation's Police Camp, which was inclusive, empowering, educational, and inspiring.

The Saanich Police Department continually assesses our services, structure, resources, and priorities to ensure that we meaningfully address and respond to the evolving and changing public safety needs of the community. We recently modernized our School Liaison Section by expanding and diversifying its mandate. This has enhanced inclusivity, diversity, and our relationship-focused approach to include schools, youth, older adults, ethnic/culturally diverse and LGTBQ2S+ communities. The evolution and modernization of this vital service demonstrates our focus and responsiveness to equity, diversity, and inclusion as well as the ongoing changes and expectations of our community, region, province, and country.

Our officers are committed to maintaining and strengthening public safety – and this is only accomplished when people feel safe. To feel safe, people need to trust and have confidence in their police, and the best way to achieve this is through connection and relationships. Our Community Liaison Officers' primary focus is building and strengthening relationships. This is accomplished through personal engagement and education-based conversations with students about important issues such as bullying, bike safety, lockdowns, online safety, drug and alcohol education, self-confidence, leadership, and goal-achievement – to list a few.

Police officers and schools have built and nurtured meaningful relationships for years, which have contributed to vibrant learning and flourishing environments within schools and our communities. The positive outcomes are evident and routinely demonstrated through the behaviours and energy of students when our Community Liaison Officers attend schools.

It is my sincere hope that the Board carefully considers the immediate and long-term impacts associated with dismantling longstanding, trusting relationships between police and schools, and can envision a future that has strong potential for achieving healthy growth through continuous improvement strategies and modernization initiatives that will strengthen and sustain these vital relationships and connections.

Respectfully,

Dean Duthie
Chief Constable
Saanich Police Department

SAANICH POLICE DEPARTMENT

DATE: November 30, 2021

TO: SD61 School Liaison Officer Ad Hoc Committee

FROM: S/Sgt. D. Underwood

Re: Saanich Police Department's Response to Presenter Comments
School District No. 61 SLO Program Review

The purpose of this memorandum is to provide additional clarity and context for information received by School District No. 61 (SD61) School Liaison Officer (SLO) Program Review Committee from presenters.

On May 10, 2021, I spoke with the Committee Chair Ms. Nicole Duncan to discuss the best method to provide clarity and context for information received in previous presentations. Ms. Duncan stated that a response could be provided in writing and that the information would be shared with the Committee later. To date, the police representatives have served as a resource to the Committee, and we have not attempted to guide the committee in their deliberations or their findings. The Saanich Police Department (SPD) have been intentional in taking this position as we do not want to be viewed as self-promoting or biased. This has at times created an uncomfortable position for the officers, because if we speak out about inaccuracies and put a presenter or a committee member on the spot, it could cast a negative shadow.

The purpose of this memorandum is to correct perceived inaccuracies that have been submitted to date so that the Committee has the benefit of a fulsome and balanced understanding of the issues in reaching their decision, and I respectfully submit the following for your review and consideration:

1) This review is specific to school liaison officers, not police in general. However, I recognize that police actions outside of schools can impact students' and school liaison officers' relationships. We need to ensure that we are not broadly stereotyping all police. The terms of reference state this committee is to review the School Liaison Officer program, not police in general. The SPD School Liaison Section is deeply committed to assisting children and youth and providing resources and assistance to all the schools we serve. We focus on a supportive delivery model, and we engage in conversation with students and parents to help build relationships.

2) There have been requests for the Committee to secure an outcome similar to the Vancouver School Board and cancel SLO programming. I think it is important to note that in deciding to suspend the SLO program in Vancouver schools, the Board also indicated their desire to work with RCMP and Municipal Police Departments to:

    - Establish communication protocols and points of contact in the event of school emergencies, lockdowns, critical incidents and VTRA
    - Determine a process to establish protocols and training for emergency procedures in schools
    - Determine a process to request information sessions
    - Determine a referral process to the gang unit

    All the above elements are foundational to our current SLO programs in SD61 schools, except for referrals to a gang unit as such a unit does not exist in CRD police agencies.

3) Several presenters have made reference to the "school-to-prison pipeline." I have conducted some additional research into this US based theory and learned the following.

    During the committee meeting on June 1, 2021, Ms. Deb Whitten confirmed that a Suspension Board oversees all child suspensions in excess of five days. Suspensions less than five days have oversight from the school principal, vice-principal and other stakeholders. Over the past three years, schools have moved away from out-of-school suspensions because they are not beneficial for relationship building and remediating behaviours. For clarity, the police are not involved in the school suspension process for SD61, or any other school district that I am aware of. Through follow-up discussions with Ms. Jennifer Chambers, I have confirmed that there has been only one police officer at an SD61 suspension hearing in her recent memory, and that police officer was present for the hearing as a child advocate making recommendations against the suspension.

    All study data I could locate for the school-to-prison pipeline originates from the United States. Their SLO programs operate very differently from those here in Victoria. During my 21-years of policing the Saanich Police Department, SLOs have never been involved in a physical altercation with a child to remove them from school property as a result of a school-imposed suspension. I recognize that suspension could lead to unsupervised time, but SD61 should look at their records of suspension to assess how high that rate is, because the studies from the United States suggest a 300% increase in school suspensions.

    In British Columbia, Crown Counsel has the responsibility of approving charges brought forward on the recommendation of police agencies. This creates another layer of insulation from the school-to-prison pipeline. The SPD SLOs do not serve as the primary investigator for criminal investigations in the school community unless absolutely necessary. Although

this is a grey area, the SPD SLOs typically refer an investigation to front-line officers but stay involved as a resource and liaison. There are times where our SLOs conduct investigations related to school activities when the circumstances suggest that it would be the most appropriate way to proceed. More commonly, SPD SLOs act as a support person to the victim, accused, parents, and school.

Across Canada, the ability to hold a youth in custody is outlined in the strict parameters of the *Youth Criminal Justice Act*. Police can only arrest for a serious criminal offence. If a youth is arrested, a tele-bail hearing before a Justice has to occur before a youth is held in a temporary holding facility. Before that hearing occurs, Crown Counsel must approve the charge as recommended by the police, then Crown Counsel, not the police, facilitates the tele-bail process. Youth in Canada are only remanded in custody for "serious violent offences", and even then as a last resort when community supervision has been deemed insufficient to mitigate known public safety risks.

The Saanich Police do not subscribe to a zero-tolerance behavioural policy and SD61 does not impose the zero-tolerance student discipline model of the United States. When serious school-based behavioural issues are identified, the police are not involved in the student's potential suspension process or their removal from school.

The school-to-prison pipeline is a US practice, not present in Victoria. SD61 does not have a suspension rate similar to the US when this phenomenon became an issue. Unlike many US jurisdictions, SPD presence in schools has not increased due to school-based shootings, and the police do not act as an authority figure or policy enforcement arm for the school. Misbehaving youth are the school's responsibility to address, not the police. If a child's behaviour puts themselves or another child at risk, then police may get involved in making the situation safe for everyone concerned.

The SPD SLO program is in place to build relationships with youth or re-build relationships if the youth has had a negative interaction with a police officer outside of school. SLOs provide educational material, give presentations, and help demystify the police uniform (see the program list already provided for engagement activities). Since the SPD SLOs visit schools K-12, it affords an opportunity for youth to become accustomed to police uniforms, and get to know the people inside the uniform, by the time they are in middle and high school.

When I look at the school-to-prison pipeline, it shows a primary issue with the US school system and the lack of responsibility to manage inappropriate conduct of youth in the school community. Instead of addressing the behaviour, the school moves to suspend the child, and police involvement is commonplace in the US model. From my understanding, this process has not and will not be supported by school districts in our community and certainly would not be supported by our local police agencies.

The article "*School Prisons and Aboriginal Youth Making Connections*" brought forward concerns about teacher interactions with aboriginal youth, not police interactions with

youth. I could not locate a reference in the article about school-to-prison pipeline or school liaison officers' involvement in increasing the youth incarceration rate.

4) There was a suggestion that SLOs create too many police files about children, that follow them from their youth into adulthood. Our SLO program works to the contrary. We do not create a police file unless it is absolutely necessary, as we do not want young people to be over-documented in the police database. Police records are subject to disclosure pursuant to the *Freedom of Information and Protection of Privacy Act*; therefore, the SPD attempt to not over-document.

5) Some stakeholders have suggested that police engagement with the Committee is adversely impacting its work and the participation of interest groups. Our participation has been limited to providing information when requested by the committee members and providing context for and information about the structure and operation of the SLO program. At the end of this process, we will look forward to receiving feedback from the Committee as we want to provide the best service possible in the interest of the students, staff, parents, and community.

6) There has been a statement that "the profession of policing is complicit with racism in our society. Police are the state sanctioned use of force that has been and continues to be used to displace Indigenous people from their land and quell dissent against injustice." In the context of the SLO program, I feel it is important to note that our officers only participate in school approved activities and only deliver school approved programming. While the Saanich Police do not have any Indigenous reserves in our policing jurisdiction, we do have a positive working relationship with the staff and visitors to the Victoria Native Friendship Centre in Saanich.

   There has been a suggestion that police are the only institution with systemic racism, and because we enforce the law, we perpetuate that racism. Being Indigenous, having aunts who went to residential school, uncles who went to day school, and my Dad being the first of his family to go to public school, I have a learned understanding of racism relating to that belief. Over time, residential schools later transitioned Indigenous students into public schools. The later public school system has also been a significant part of systemic racism for Indigenous people. Both the school system and the policing profession have been taking important steps to acknowledge the harm done by these policies and improve their institutions. I will be the first to admit that not all aspects of policing are perfect. However, I cannot accept the assertion, in our current SLO program review context, that policing has been the only institution that has been involved in systemic racism when educational and other government institutions have likewise been involved as well. We all have work to do in partnership with one another to acknowledge the harm done and take meaningful steps to improve public service delivery for all vulnerable persons in our community going forward.

7) It appears from the Committee discussions that some committee members may not have had much personal experience working directly with SLOs to inform their own opinions

about the officers and the programs they deliver to students and staff in our schools. I would respectfully encourage the Committee to carefully consider the input of those students and staff who have had the opportunity to engage with SLOs and our programs in reaching your decision about the future of the SLO program in SD61. All police agencies have provided a list of existing programs that police are offering. This Committee's objective is to assess the SLO program, and those who have experience with it should be best positioned to identify the elements of the SLO program that might be safeguarded, improved, or removed.

In conclusion, I would like to leave the Committee with this final thought for consideration. The Committee has undertaken broader discussions of related constructs such as racism, systemic racism, and white privilege. These are all significant concerns, and as an Indigenous person, I appreciate that these conversations are occurring. When I hear that children or youth are fearful of the police, that is saddening. In some cases, those fears might be rooted in the three points above. That fear could also be a compounded fear from shared stories or learned behaviour from the child or youth's family or friends. As the Review Committee, you face a critical question about whether engagement or disengagement with the SLO program will produce the desired outcomes for students and our community.

The Committee could vote to end the SLO program as an attempt to rectify racism, systemic racism, white privilege, or fear. By doing so I think the fear is left to continue and grow within the affected person because they will not know anything different. A possible negative interaction with a police officer outside of school will be the only known interaction to guide that person's beliefs as they grow. The complete removal of SLOs, that are attempting to improve relationships, might only continue a cycle of racism, systemic racism, white privilege, or fear that everyone in society wants to stop.

Conversely, the Committee could vote to maintain or modify the SLO program to connect with children and youth. The school liaison officers can continue to try and break down that wall of fear or history of racialized behaviours. As a police officer, I have had personal conversations with marginalized youth and adults where they have shared a negative interaction with a police officer. After our discussion, they have appreciated the opportunity to speak to a different officer to help inform their thoughts and feelings. I have also had the privilege of receiving feedback from the BIPOC community, where they have sought more police participation in community events to strengthen the relationship between the community and police.

I believe that it is through our conversations that real change occurs. If those conversations don't happen, then stereotypes and fear have an opportunity to grow and jeopardize public trust and confidence. Allowing fear or the thoughts of racism to continue to grow in our children or youth is not breaking down the barriers we want addressed. I believe that the path forward for the public police relationship will require enhanced opportunities for engagement and understanding and that our community will grow stronger as a result.

Thank you for the opportunity to share this information and my personal reflections with you

for your review and consideration.

Respectfully submitted,

Staff Sergeant Darrell Underwood
Community Engagement Division
Saanich Police Department

VPVPA

April 21, 2023

Board of Education
School District No. 61 (Greater Victoria)
556 Boleskine Road
Victoria BC V8Z 1E8

Dear Greater Victoria School District 61 Trustees,

Re: Victoria Principals' and Vice Principals' Association Letter in support of Greater Victoria School District 61 Police Liaison Program

The Victoria Principals' and Vice Principals' Association wishes to express our support for the continuation of the Greater Victoria School District's School Liaison Program.

As administrators in SD61, Principals and Vice Principals are focused on supporting our students. Our roles and support stretch beyond the classroom. We work with many provincial, municipal and local community members, agencies, unions and nations in a shared goal of nurturing student learning and their wellbeing in a safe, responsive and inclusive learning environment. These partnerships and working relationships reflect our district's values of engagement, equity, innovation, positive change, integrity, openness, transparency, respect, social responsibility and justice. Over the years the program has been in effect, the school liaison officers have proven to play an important role in achieving our goals. Our relationships with our local police departments reflect our shared values.

Administrators have seen the benefits of this program in the positive relationships that School Liaison Officers (SLO) foster with students, beginning in elementary school and through middle and secondary schools. School liaison officers are present in schools for assemblies, to answer questions from students, to visit classes and to consult by request with administrators, teachers, students and families about a variety of issues. Our SLO community

partners' approach to this work is trauma-informed and demonstrates both professionalism and sensitivity. These important and deliberate connections build relationships with students, families and community through positive interactions.

There are also times when schools need the assistance and expertise of police officers. In those high stress times, the familiar face of a trauma-informed trained school liaison officer can decrease anxiety for students. SLOs know our students, our buildings, and our unique circumstances. We reach out to our SLOs to work together to support students who are struggling in school or community. Our district works collaboratively with SLOs and other agencies to identify students who need additional supports and can continue that support after school hours as appropriate.

The VPVPA acknowledges the important work that schools need to do with our IBPOC and marginalized students and the Truth and Reconciliation's Calls to Action as well as the United Nations Declaration on the Rights of Indigenous Peoples. We feel this important work is best done in partnership with the institutions, who like schools, have historically created and upheld unjust systems. Removing our school liaison officers from schools does not help to decolonize our systems; rather it maintains and reinforces stereotypes and barriers towards Truth and Reconciliation.

The Victoria Principals' and Vice Principals' Association strongly wishes to work towards decolonization and demarginalization within our schools and with our partners. We feel we are better together, and together we can make these necessary improvements. Each partner's voice is essential and we look forward to continuing this important work.

Sincerely,

Brenna O'Connor
VPVPA President
On behalf the Victoria Principals' and Vice Principals' Association

Kelly Gorman

From: Jeff Duyndam
Sent: Friday, April 21, 2023 12:56 PM
To: Trustees
Cc: Deb Whitten
Subject: FW: Police Liaison Officers

Would you please include the email below from the teachers at Tillicum in Board Correspondence. Thank you.

Jeff Duyndam
Principal, Tillicum Community School
Greater Victoria School District No. 61
Ph: 250-386-1408 Fax: 250-380-2805
tillicum.sd61.bc.ca | @TillicumTBirds

Greater VICTORIA School District — One Learning Community

From: Laura Nault
Sent: Friday, April 21, 2023 12:53 PM
To: Jeff Duyndam <jeduyndam@sd61.bc.ca>
Subject: Police Liaison Officers

To Whom It May Concern,

We are writing to express our support for the Police Liaison Program to continue in its current capacity. Over the years, we as a staff have experienced an array of opportunities that have brought nothing but positive experiences for our student body. This includes, but is not limited to:

- mentoring programs for at-risk youth
- educational opportunities through police dog training
- opportunities for young children to connect with police officers in a positive manner
- presentations around Halloween and bike safety.

We have also appreciated police volunteers who have donated their time to our toast program, Cops for Cancer (who come by our school every year), and helping us connect with outside businesses in the Tillicum community. We feel strongly, given the positive impact of the Police Liaison Program, it should be allowed to continue. It has had a wonderful impact with our vulnerable and culturally diverse families that we have in our community. We also feel that the program is a vital component to building bridges between police officers and our community.

Thank you for your consideration,

Brad Carlson (GVTA Rep), Laura Nault (Staff Committee Chair), Meghan Kushnir (E.L.L. Specialist), and Marylou Tompkins (Pro-D Rep)

Tillicum Elementary

Greater Victoria School District No. 61
Ph: 250-386-1408
www.sd61.bc.ca | @sd61schools