

## **Input to Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement**

The 613-819 Black Hub focuses on addressing systemic anti-Black racism to reimagine community safety that respects people's human rights and keeps us all safer. The Hub's input covers the municipal, provincial and federal levels.

### **Investigation, prosecution and sentencing, and other accountability and redress measures, including disciplinary proceedings**

In 2020, the Ontario government ordered all Ontario police forces to start including race on their use of force reports. Despite police data from major Ontario cities like Ottawa and Toronto showing they continue to use force disproportionately on racialized, especially Black, people, there are no effective accountability measures to stop them from doing so. In Ontario, the Special Investigations Unit is tasked with conducting investigations of the circumstances around serious injuries, allegations of sexual assault, firearm discharges, and deaths in cases involving officials, which includes police. However, this doesn't include use of force incidents which don't result in serious injury but can have a devastating impact on people's mental health. Furthermore, a [2020 NOW Magazine](#) story revealed that the SIU cleared 95 per cent of the officers it investigated in 2019. A [2021 study](#) found that of nearly 150 charges laid by the SIU since 2005 that have been resolved, most ended in acquittal or the withdrawal of charges.

Another issue with the SIU is that officers they're investigating aren't obligated to be interviewed by the SIU as part of the investigation. And if officers accused of using excessive force are suspended, they're suspended with pay, leaving the impression that beating up on Black and other racialized people leads to paid vacations.

I recently attended a meeting with Black police officers and youth and asked Ottawa Police Service Deputy Chief Paul Burnett, who's Black, why the OPS had not produced a plan to stop using force disproportionately on Black people and his answer was: "We don't have a plan...we have intent." He then spoke about the various antiracism training OPS officers get. However, despite training, OPS officers continue to use force disproportionately on Black people.

Another issue is that the Ottawa Police Services Board hasn't asked the OPS for a plan to stop using force disproportionately on Black people. This is consistent with the OPSB acting as a rubber stamp for every OPS demand instead of an oversight body it is mandated to be. I am part of a coalition of community groups suing the Ottawa Police Services Board for violating our constitutionally protected right to freedom of expression via restrictions the Board has imposed on public delegations to the Board.

### **Ensuring that examining the role of racial discrimination, stereotypes and biases is central to accountability measures**

The only place we are aware of in the Canadian justice system where examining the role of racial discrimination, stereotypes and biases is encouraged is by judges at the sentencing stage

of criminal trials. The 2021 Ontario Court of Appeal *R. v. Morris* decision was a key catalyst of this as it considered the impact and role of anti-Black racism in sentencing.

The Canadian government included \$8 million in funding from 2024-2029 for Justice Canada to expand the use of Impact of Race and Culture Assessments in sentencing Black and racialized individuals. IRCAs, prepared by people with expertise in anti-Black racism, are what judges have been using to consider the impact and role of anti-Black racism in sentencing Black defendants.

This is good but highlights another key problem with the justice system: judges get almost no effective antiracism training. In her 2021 report [\*Turning the Tables on RDS: Racially Revealing Questions Asked by White Judges\*](#) University of Ottawa law professor Constance Backhouse argued that many white lawyers and judges live primarily in a “white bubble,” raised in families, schools, neighbourhoods, workplaces, and social circles largely confined to white people. While insensitivity to racism is not an inevitable consequence, for most of them, the experiential gap means they aren’t well-equipped to assess racism claims. Judicial antiracism training might help but Backhouse says judges have traditionally been averse to judicial education with many judges insisting that such courses “could be a cover for attitudinal indoctrination by interest groups.” The 2019-2023 Ontario Superior Court of Justice report [\*Modernizing the Justice System\*](#) says judges receive “cultural competence and unconscious bias education” but doesn’t mention racism, antiracism or systemic anti-Black racism training.

The Special Investigations Unit’s 2022-2023 Annual Report says the SIU’s Diversity, Equity, Inclusion and Employee Experience Committee was created in 2021 with staff at all levels. The committee was meant to help the SUI in “applying an anti-racism lens to agency operations.” However, it appears to have had little to no impact on SIU investigation results - with the SIU continuing to charge relatively few officers and those who are charged rarely being convicted.

### **The role of victims and their families during accountability processes**

We work mostly at the systemic level, not directly with victims of families, so have limited input on this. However, one of the most high profile cases of police use of force may provide some insights. In 2016, Abdirahman Abdi, a Somali man experiencing a mental health crisis, died after a police interaction that saw an officer punch Abdi several times in the head with reinforced gloves. The SUI charged the officer, Daneil Montsion, with manslaughter, aggravated assault and assault with a weapon. He was acquitted in November 2020. Abdi’s family eventually sued the police for \$1.5 million and announced a confidential settlement with the Ottawa police in January 2021.

The lack of accountability of Ottawa police officers for victims and their families is compounded by the lack of transparency of the Ottawa Police Service. On June 25, 2023, the Ottawa police received 911 calls at 2:11pm about a man with a knife in the Byward Market having a mental health crisis and responded by shooting and killing the man three minutes later at 2:14pm. When we asked the OPS the ethnicity of the man they killed they told us they couldn’t release that information for “privacy” reasons. However, after we filed a Freedom of Information request

and an appeal with Ontario's Information and Privacy Commissioner the OPS did share the information, clearly showing their initial privacy claim was false.

### **Independent and well-resourced oversight and complaint procedures**

There are no independent and well-resourced oversight and complaint procedures regarding police use of force in Ontario. The Ontario Civilian Police Commission and the Office of the Independent Police Review Director are supposed to deal with systemic and individual officer complaints respectively, but have both proved ineffective. With the coming into force on April 1, 2024 of the Community Safety and Policing Act, 2019 (CSPA) it was announced that the OCPC will be dissolved. This is good but raises the question: what will replace it?

As stated earlier, Ontario's police boards are more rubber stamps than oversight bodies that continue to approve annual multi million dollar police budget increases despite the overwhelming evidence this doesn't make communities safer. This has been the case in Ottawa, Toronto and Peel Region.

### **Independent and well-resourced mechanisms to support victims and communities affected**

There are no independent and well-resourced mechanisms to support victims and communities affected.

### **Other issues**

**Mental health crisis response** - Ottawa police officers continue to harm and kill people experiencing mental health crises who they are called to help. In July 2023, Ottawa City council approved the Safer Alternative Mental Health crisis response pilot project. The project was created by the Guiding Council on Mental Health and Addictions which the Ottawa police created and of which they are a member. The Guiding Council's terms of reference says it aims for a system that will still send police, "when the crisis is linked to criminal activity". But that vague wording would include people like Abdirahman Abdi and who will end up just as dead under the system currently being piloted.

**Police in schools** - In June 2021, Ottawa's biggest school board, the Ottawa Carleton District School Board, ended its school resource officer (SRO) program, limiting police intervention to only incidents where school administrators are legally mandated to call the police. Despite this, a recent report prepared for the City of Ottawa's Community Safety and WellBeing Office has a section that says, "Law enforcement - Encourage law enforcement staff and officers to become mentors and volunteer time in schools to deliver violence prevention presentations." At the Black officer/youth event I mentioned earlier, Ottawa Police Deputy Police Chief Paul Burnett said the cancellation of the SRO program had hampered OPS recruiting efforts and that they were "envisioning ways to get back into schools."

**Differential use of force against protestors** - The Ottawa Police Service have been using different levels of force against white and racialized protestors. In November 2020, the Ottawa police broke up a protest of young Black and Indigenous demonstrators who had blocked an intersection to protest the acquittal of OPS constable Daniel Montision in the 2016 death of Abdirahman Abdi. The OPS charged 12 of the young protestors. However, in February 2022, the Ottawa Police let mostly white “Freedom Convoy” protestors occupy Parliament Hill for three weeks.

**Police education** - In April 2023, Ontario Premier Doug Ford said the province plans to eliminate the post-secondary education requirement to become a police officer and tuition fees at the Ontario Police College.

**Police misinformation** - Copaganda continues to be an issue, from the Ottawa police releasing misleading information suggesting its budget is decreasing to using the police officer to population ratio (cop-to-pop ratio) to suggest that Ottawa having a lower cop-to-ratio than other cities means the city is less safe to quoting the confusing Crime Severity Index to suggest crime is going up, the Ottawa Police Service propaganda machine is very effective at justifying multi million dollar annual police budget increases.

**Layered policing** - In response to community calls to defund police and fund necessary social resources, cities across the country have instituted “layered policing.” From Lethbridge to Saskatoon to Ottawa, these moves actually deploy more police throughout the community, and embed policing in everyday social life...all while presenting a model in which social services are framed as policing “partnerships”. Layered policing is not a reform, nor is it an alternative or new model of policing. It is expanded policing, reaching throughout community spaces and everyday practices...it intrudes into streets, schools, malls, workplaces, and sports groups. It combines police with “crime prevention” volunteers, business-funded police “street ambassadors”, and youth groups...it embeds policing into housing, health care, income assistance, education and other services. It hides behind a distorted appeal to diversity or “reaching vulnerable communities” in order to further police poor and racialized people.” More police in more spaces risks increased use of force in those spaces.

## **Recommendations**

1. Police forces in Canada should be required to implement use of force directives similar to that of the Camden County Police in New Jersey. In 2013, the Camden County Police Department adopted an innovative, [revised use of force policy](#). The revised policy goes beyond the U.S. Supreme Court’s minimal constitutional principles regarding use of force—that an officer may only use force that a reasonable officer would when facing similar circumstances—to clearly state that officers must do everything possible to respect and preserve the sanctity of all human life, avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public. The policy’s six core principles are:

- 1) Officers may use force only to accomplish specific law enforcement objectives.
  - 2) Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable.
  - 3) Officers must use only the amount of force that is proportionate to the circumstances.
  - 4) Deadly force is only authorized as a last resort and only in strict accordance with this directive.
  - 5) Officers must promptly provide or request medical aid.
  - 6) Employees have a duty to stop and report uses of force that violate any applicable law and/or this directive.
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2. Require judges to take effective antiracism training, especially in systemic anti-Black racism. Mandate the collection of race-based data on the cultural identity of judges and their decisions in cases involving defendants of varying racial backgrounds.
  3. The Ontario government should provide more resources to the Human Rights Tribunal of Ontario to handle complaints of human rights violations by Ontario police officers and should create a centre to help Black people file HRTO complaints.