Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

MOTION RECORD OF THE MOVING PARTY
INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

May 23, 2019

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO
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TAB 1

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COURT OF APPEAL FOR ONTARIO

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Respondent
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- and -

JEFFREY BOGAERTS

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NOTICE OF MOTION (LEAVE TO INTERVENE)

BY

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

The Information and Privacy Commissioner of Ontario (the "IPC") will make a motion to a judge of this Honourable Court on a date to be fixed by the Registrar for the Court of Appeal for Ontario at 130 Queen Street West, Toronto, Ontario, M7A 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing under Subrule 37.12.1(1) because it is on consent.

THE MOTION IS FOR an order:

1. Granting the IPC leave to intervene in this appeal as a friend of the court,

2. That the IPC shall not expand the record in the appeal, including by adding materials that would appropriately be the subject of a motion for fresh evidence,

3. Granting the IPC leave to file a factum not exceeding 15 pages by June 19, 2019 or such other time as is agreed by counsel and acceptable to the Court,

4. Granting both the Respondent (Appellant in appeal) and the Applicant (Respondent in appeal) leave to file material responding to the IPC's factum by July 19, 2019 or such other time as is agreed by counsel and acceptable to the Court,

5. Granting the IPC leave to make oral argument on the hearing of the appeal not exceeding 15 minutes,

6. That the parties will agree to accept service of their respective materials by electronic mail, with paper copies to be provided upon request,

7. That the IPC neither seeks nor will be liable for costs in connection with the appeal,

8. That there be no costs of this motion, and

9. Such further and other order as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Overview of the central section 7 *Charter* issue on appeal

1. The matters at issue in Ontario Court of Appeal File No. C66542 concern a section 7 and section 8 *Charter* challenge to the law enforcement powers granted to the Ontario Society for the Prevention of Cruelty to Animals (the "OSPCA") under the *Ontario Society for the Prevention of Cruelty to Animals Act* (the "*OSPCA Act*"). The IPC seeks leave to

intervene solely with respect to the section 7 issues associated with the principle of fundamental justice recognized by the court below, namely that law enforcement bodies must be subject to reasonable standards of transparency and accountability (the "transparency and accountability principle").

The proposed intervener and the role of access to information rights

2. The IPC is an officer of the Legislative Assembly of Ontario responsible for administering the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("*FIPPA*") and adjudicating appeals from decisions of institutions relating to requests for access to records, and determining whether those records can be withheld or must be disclosed.

3. *FIPPA* and its municipal counterpart govern rights of access to records held by a wide range of provincial and municipal government institutions. Bodies subject to Ontario access to information legislation include all Ontario police services, as well as other institutional actors whose duties include performing law enforcement functions (e.g. the Ontario Securities Commission, the Alcohol and Gaming Commission of Ontario, and special constables and by-law enforcement officers working at institutions).

4. Access to information rights are indispensable in a modern democracy. A working democracy depends on an informed public. The public's meaningful participation in holding government to account and participating in democratic decision-making requires that people be informed about the workings of government. Law enforcement functions are quintessential government functions, whether they are performed by peace officers, special constables, or inspectors or investigators employed by bodies with specialized mandates. It is difficult to conceive of an informed public without substantial transparency with respect to government functions, decisions and activities. The rights

and duties provided for under *FIPPA* and other Canadian access to information statutes ensure that government bodies are subject to significant public scrutiny and help to ensure that officials who perform government functions are accountable for their decisions and activities.

The IPC's interest

5. The IPC has a real, substantial and identifiable interest in the issues raised in this appeal:

- The parties and the decision below have put *FIPPA* and its role in facilitating transparency and accountability into issue in this appeal.
- This Court's decision with respect to the principle of fundamental justice issues may impact the IPC's decisions interpreting and applying its home statutes.
- In the absence of hearing from the IPC, the Court's ruling may have unintended consequences for those statutes.

6. The IPC has a real, substantial and identifiable interest in the Court's decision about the constitutionality of a government decision to permit a government function to be performed by a body that is not subject to access to information legislation, including with respect to the principles by which the determination of constitutional validity is made.

The nature and likely impact of the appeal favour intervention

7. The constitutional nature of the appeal favours intervention. Its outcome is likely to have a significant impact on the public. This Court's *Charter* ruling is likely to have an impact on the public's right to know about law enforcement functions, decisions and activities beyond those of the OSPCA. For example, the ruling has implications for other bodies that have law enforcement powers, including 12 administrative authorities overseen by the Ministry of Government and Consumer Services. None of the 12 authorities operating

in Ontario today are subject to *FIPPA*. Eight of those authorities are empowered to investigate and enforce offences punishable by incarceration.

8. This Court's affirmation of the lower court's ruling may, by implication, extend constitutional protection over statutory access rights associated with a range of bodies lawfully empowered to cause deprivations of life, liberty or security of the person. For example, the transparency and accountability principle is likely to have an impact on bodies empowered to use lethal force (e.g. police services), detain accused and convicted individuals (e.g. police services and correctional institutions), and take children into protective custody (e.g. children's aid societies).

The IPC distinct and relevant perspective is grounded in experience and expertise

9. The IPC has substantial experience and specialized expertise administering Ontario's access to information statutes in accordance with their underlying purpose, to facilitate an informed public's participation in democracy and the public's ability to hold governments accountable. The IPC serves the vital role of providing independent review of government decisions in furtherance of those purposes. Central to its mandate are issues pertaining to:

- The disclosure of government records necessary for meaningful discussion on matters of public interest and importance, and
- Constraints on the disclosure of information that could interfere with the proper functioning of government.

10. The IPC also has specific experience relating to requests for law enforcement-related information. Over a period of more than 20 years, the IPC has issued hundreds of decisions that have adjudicated requests for such information. Access to information

requests have frequently resulted in the disclosure of information that has triggered public debate and law and policy reform.

11. The IPC has appeared as an intervener before this Court and other courts and made submissions that were of assistance to those courts and distinct from the submissions of other parties, including in several cases involving fundamental rights.

The IPC's submissions will be useful and different

12. If granted leave to intervene as a friend of the Court, the IPC will:

- Make submissions on the hearing of the appeal that will be of assistance to the Court and that will be different from those of the parties and other interveners.
- Restrict its submissions to addressing two questions through the lens of the Supreme Court of Canada's principle of fundamental justice test:
  - Is there a principle of fundamental justice that requires that organizations empowered by law to deprive individuals of their section 7 *Charter* rights must be subject to reasonable standards of transparency and accountability?
  - If so, what are the sources, scope and elements of such a principle?

Outline of proposed submissions

13. If granted leave to intervene, the IPC will submit that section 7 of the *Charter* dictates that all organizations empowered by law to deprive individuals of their section 7 rights must be subject to reasonable standards of transparency and accountability, including bodies whose law enforcement functions are regulatory in nature. In Ontario, these standards are satisfied, in whole or part, through statutes such as *FIPPA*. The transparency and accountability provided for under a statute such as *FIPPA* is a necessary corollary to the transparency and accountability provided for by the courts and other tribunals.

14. As indicated by the Supreme Court of Canada, a key task in assessing a new principle of fundamental justice is delineating the boundaries of the individual and societal interests that must be accommodated under such a principle. The relevant interests at issue in the appeal are the imperative of balancing the interests of the public in ensuring effective law enforcement with society's fundamental interest in allowing the public to monitor law enforcement bodies such as the police.

15. A principle of fundamental justice may be derived from a right or duty already recognized as a constitutional right or norm and must be defined in a way that promotes coherence within the *Charter*. Section 2(b) and section 7 jurisprudence demonstrates that the key elements of an access to information facilitated transparency and accountability principle have already been recognized as a constitutional right or norm.

16. To comply with the transparency and accountability principle, law enforcement bodies empowered to deprive individuals of their section 7 *Charter* rights must be subject to statutory standards of transparency and accountability that provide for:

- A law enforcement body's duty to preserve its records and only destroy them pursuant to written record retention schedules or other legal requirements,
- An individual's right to request access to general information, as well as their own personal information, in a law enforcement body's custody or control,
- An individual's right to obtain that information subject to a reasonable framework of statutory exemptions and exclusions,
- A law enforcement body's duty to meet its burden of proof, act in utmost good faith, provide a timely written access decision, and exercise its powers of decision reasonably, including by considering the public interest in disclosure, and
- An individual's right to appeal the law enforcement body's decision (including a lack

of a decision) to an independent adjudicator with authority to review the records and order their release if the reviewer determines, after hearing from the parties, that the information is not exempt or excluded from disclosure.

17. The transparency and accountability standards described above constitute a legal principle that is reflected in access to information legislation in force in Ontario and across Canada.

18. The comprehensive, pan-Canadian adoption of access to information legislation provides significant evidence that there is a strong consensus that the transparency and accountability principle is both fundamental to our societal notion of justice and that it is a principle capable of being identified with precision and applied to situations in a manner that yields predictable results.

19. Further support for the proposition that the transparency and accountability principle is a vital, precise and predictable legal principle is found in international law.

Other matters

20. The Respondent (Appellant in Appeal) and the Applicant (Respondent in Appeal) have consented to the IPC's proposed intervention subject to the terms set out in the Draft Order included in the IPC's Motion Record.

21. If granted leave to intervene, the IPC will:

- Confine its submissions to the issues set forth above,
- Not take a position on the ultimate disposition of the appeal,
- Not seek leave to file any new evidence, but rely on the record before the Court,
- Work with counsel for the Applicant (Respondent in Appeal) and the other intervener(s) to ensure that our submissions are not duplicative, and
- Not seek costs and ask that no costs be awarded against it.

22. Rules 13 and 37 of the *Rules of Civil Procedure*.

23. The *Freedom of Information and Protection of Privacy Act*.

24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Commissioner Brian Beamish, sworn May 23, 2019,
2. the consents of the parties,
3. a draft order, and
4. such further and other material as counsel may advise and this Honourable Court may permit.

May 23, 2019

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THE ATTORNEY GENERAL OF ONTARIO - and - **JEFFREY BOGAERTS**

Respondent
(Appellant in Appeal)

Applicant
(Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

NOTICE OF MOTION OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO
(on the motion for leave to intervene)

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Information and Privacy Commissioner of Ontario

TAB 2

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

AFFIDAVIT OF BRIAN BEAMISH
ON THE MOTION FOR LEAVE TO INTERVENE
(Sworn May 23, 2019)

I, BRIAN BEAMISH, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the Information and Privacy Commissioner of Ontario (IPC) appointed under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*)[1] as an officer of the Legislative Assembly of Ontario. I was appointed to this office on an acting basis from July 1, 2014 to

[1] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 4(1) ("*FIPPA*").

February 25, 2015, when my five-year appointment was confirmed by the Legislative Assembly of Ontario. From 2005, I held the position of Assistant Commissioner, in which capacity I was responsible for overseeing the investigative and tribunal functions of the IPC. I also served as Director of Policy and Compliance with the IPC from 1999 to 2005. As such, I have knowledge of the matters to which I depose in this affidavit.

2. I affirm this affidavit in support of the IPC's motion for leave to intervene in this appeal.

3. In the course of considering the IPC's role as a possible intervener, I have reviewed documents associated with this appeal including:

- The facta filed with the Ontario Superior Court of Justice in the related proceedings below,
- The decision of the Ontario Superior Court of Justice in *Bogaerts v. Ontario (Attorney General)*, 2019 ONSC 41,
- The following materials filed with this Court:
  - The Attorney General's Notice of Appeal,
  - Jeffrey Bogaert's Notice of Cross Appeal,
  - The Attorney General's Appeal Factum,
  - The Motion Record of the proposed intervener, Animal Justice Canada,
  - Jeffrey Bogaert's Appeal and Cross-Appeal Facta.

In addition, I am familiar with the access to information statutes, the decisions of the IPC, and the jurisprudence of the courts to which I refer in this affidavit. I make this affidavit on the basis of personal knowledge or information and belief, in which case I believe the contents to be true.

A. Overview of the central section 7 *Charter* issue on appeal

4. The matters at issue in Ontario Court of Appeal File No. C66542 concern a section 7 and section 8 *Charter* challenge to the law enforcement powers granted to the Ontario Society for the Prevention of Cruelty to Animals (OSPCA) under the *Ontario Society for the Prevention of Cruelty Act* (*OSPCA Act*). The IPC seeks leave to intervene solely with respect to the section 7 issues associated with the principle of fundamental justice recognized by the court below, namely that law enforcement bodies must be subject to reasonable standards of transparency and accountability (the "transparency and accountability principle").

5. The *OSPCA Act* provides that: (i) the object of the OSPCA is to provide for the prevention of cruelty to and the protection of animals; (ii) the OSPCA shall appoint a Chief Inspector who may appoint other inspectors; and (iii) the Chief Inspector and the inspectors have and may exercise "any of the powers of a police officer." OSPCA inspectors enforce the *OSPCA Act*, as well as provincial and *Criminal Code* animal cruelty laws, including through the use of their *OSPCA Act* search and seizure powers. Convictions for *Criminal Code* and *OSPCA Act* animal cruelty offences attract up to five and two years imprisonment respectively.

6. The court below was satisfied that Jeffrey Bogaerts had proved a deprivation of liberty due to the fact that *OSPCA Act* convictions are punishable by incarceration. The court also found that security of the person was engaged in relation to the OSPCA's search and seizure powers. The court then went on to find that the *OSPCA Act* contravenes the transparency and accountability principle by assigning investigative, as well as police powers to the OSPCA without subjecting it to transparency and accountability standards such as are provided for under the *Police Services Act*, the *Ombudsman Act*, and *FIPPA*. Finally, on the basis of its section 7 findings, the court declared three *OSPCA Act* provisions unconstitutional, but suspended the declaration of invalidity

for one year to allow the government time to consider the range of constitutional options and enact the necessary changes.

7. At the heart of the court's decision was its concern that "the OSPCA appears to be an organization that operates in a way that is shielded from public view while at the same time fulfilling clearly public functions. [A]lthough charged with law enforcement responsibilities, the OSPCA is opaque, insular, unaccountable, and potentially subject to external influence, and as such Ontarians cannot be confident that the laws it enforces will be fairly and impartially administered."

B. The proposed intervener and the role of access to information rights

8. The IPC is responsible for administering *FIPPA,* the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*), and the *Personal Health Information Protection Act, 2004*. As of January 1, 2020, the IPC will also be responsible for administering Part X of the *Child, Youth and Family Services Act, 2017.*[2]

9. *FIPPA* and *MFIPPA* govern the rights of access to records held by a wide range of provincial and municipal government institutions, including:

- The Ministry of the Solicitor General and the Ontario Provincial Police,
- All of the police services boards and police services in Ontario, and
- Other institutional actors whose duties include performing law enforcement functions such as the Ontario Securities Commission, the Ontario Lottery and Gaming Commission, the

[2] *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("*MFIPPA*"); *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A; *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1.

Ontario Human Rights Commission, the Financial Services Commission of Ontario,[3] the Alcohol and Gaming Commission of Ontario, and special constables and by-law officers working with transit authorities, universities, and municipalities.

10. The purposes of both *FIPPA* and *MFIPPA* is:

> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. [4]

The provisions of *MFIPPA* are in all other relevant respects the same as the provisions of *FIPPA* discussed below. For the sake of brevity, hereafter I refer to the provisions of *FIPPA* only.

11. *FIPPA* grants every person a right of access to records in the custody or control of a government institution unless a statutory exemption or exclusion from the right of access applies.[5] *FIPPA* contains a "public interest override" which provides that certain exemptions do not apply where a compelling public interest clearly outweighs the purpose of the exemption.[6] In addition, there is a public interest provision which requires an institution to proactively disclose to the public a record which reveals a grave environmental, health or safety hazard without waiting for a request for access to information.[7]

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[3] The Financial Services Commission of Ontario is expected to be renamed and continued as the Financial Services Regulatory Authority of Ontario shortly.
[4] *Ontario FIPPA*, s 1; *Ontario MFIPPA*, s 1.
[5] *Ontario FIPPA*, ss 12-22, 65(1-6, 8-8.1, 11-14).
[6] *Ontario FIPPA*, s 23.
[7] *Ontario FIPPA*, s 11.

12. Requesters and affected third parties are given a right to appeal access decisions to the IPC, which is then empowered to investigate and to mediate the dispute. If no settlement is reached, the IPC may conduct an inquiry to review the institution's decision. This is an adjudicative function. In conducting inquiries into access disputes under *FIPPA*, the IPC is given the powers, among others, to enter and inspect premises, order the production of records for inspection and summon witnesses to give evidence. The government institution resisting disclosure bears the burden of proving an exemption or exclusion applies.[8] After hearing the evidence and representations of the parties, the IPC will make an order disposing of the issues raised in the appeal, which may include an order for disclosure of records that are not exempt or excluded, along with any other appropriate terms or conditions. There is no right of appeal from the orders of the IPC which are binding on the institution. Judicial review is available where proper grounds can be established. It is an offence to wilfully obstruct the IPC in the performance of its statutory functions, make a false statement to or mislead the IPC, or wilfully fail to comply with an IPC order.[9]

13. Access to information rights are indispensable in a modern democracy. A working democracy depends on an informed public. The public's meaningful participation in holding government to account and participating in democratic decision-making requires that people be informed about the workings of government. Law enforcement functions are quintessential government functions, whether they are performed by peace officers, special constables, or inspectors or investigators employed by bodies with specialized mandates. It is difficult to conceive of an informed public without substantial transparency with respect to government functions, decisions and activities. The rights and duties provided for under *FIPPA* and other

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[8] *Ontario FIPPA*, s 53.
[9] *Ontario FIPPA*, s 61.

Canadian access to information statutes ensure that government bodies are subject to significant public scrutiny and help to ensure that officials who perform government functions are accountable for their decisions and activities.

14. In its 2015 Annual Report, the IPC observed that since *FIPPA* was introduced:

> Government has changed the way it delivers public services. Increasingly, services are outsourced or delivered by public-private partnerships, arms-length agencies, delegated administrative authorities, self-funded agencies, or other service delivery models. Regardless of their status, these organizations are responsible for delivering services to the public and have corresponding duties and responsibilities. Decisions about which organizations are covered by the acts have been made on a case-by-case basis and at various points in time, resulting in inconsistent levels of ***accountability and transparency***. [Emphasis added.]

In calling for modernization of Ontario's access to information laws, the IPC recommended that:

> Unless there are unique and compelling reasons not to, an organization should be covered under the acts if:
>
> - It receives a significant amount of its operating funds from the government
> - It delivers a program designed to support government objectives
> - The government plays a significant role in its policy development and operational direction
>
> *FIPPA* [] should be amended to ensure a consistent approach that allows for the creation of new service delivery models that do not weaken access and privacy rights.

Attached as Exhibit "B" is the relevant excerpt from the IPC's 1998 Annual Report.

C. Grounds for the motion for leave to intervene

15. The IPC has a real, substantial and identifiable interest in the issues raised in this appeal. The constitutional nature of the appeal favours intervention. Its outcome is likely to have a significant impact on the public. The IPC has distinct and relevant experience and expertise and will make submissions that will be of assistance to this Court and different from the other parties.

(i) The IPC has a real, substantial and identifiable interest in the issues

16. The parties and the decision of the court below have put *FIPPA* and its role in facilitating transparency and accountability into issue in this appeal.

17. The IPC has a real, substantial and identifiable interest in this Court's decisions with respect to the principle of fundamental justice issues, as they may impact on the IPC's decisions interpreting and applying its home statutes.

18. Administrative tribunals are obliged to apply *Charter* values in the exercise of their statutory discretion wherever such an issue is properly raised.[10] The Supreme Court of Canada has held that specialized tribunals with expertise and authority to decide questions of law are in the best position to hear and decide issues concerning the constitutionality of provisions of their home statutes and have the authority to do so at first instance.[11] The IPC may be affected by the Court's ruling on the section 7 *Charter* issues in exercising its reviewing authority.

19. The IPC has a real, substantial and identifiable interest in the due administration of justice under its home statutes and in ensuring that the statutes' purposes are fulfilled and not frustrated by the actions of government.

20. The IPC has a real, substantial and identifiable interest in the Court's decision about the constitutionality of a government decision to permit a government function to be performed by a body that is not subject to access to information legislation, including with respect to the principles by which the determination of constitutional validity is made.

21. The Court should be cognizant of access to information statutes such as *FIPPA* and take into account the potential impact its judgment may have on the rights of access and the oversight

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[10] *Doré v. Barreau du Quebec*, 2012 SCC 12.
[11] *R. v. Conway*, 2010 SCC 22.

and enforcement mechanisms in those statutes. In the absence of hearing from the IPC, the Court's ruling may have unintended consequences for those statutes.

(ii) The nature and likely impact of the appeal favour intervention

22. This Court's *Charter* ruling will have an impact on the public's right to know about the law enforcement functions, decisions and activities of various bodies, not just those of the OSPCA. For example, as indicated at paragraph 55(a) of the Attorney General's Appeal Factum, the ruling has implications for other bodies that have law enforcement powers, including 12 administrative authorities overseen by the Ministry of Government and Consumer Services. None of the 12 authorities operating in Ontario today are subject to *FIPPA*. Eight of those authorities are empowered to investigate and enforce offences punishable by incarceration. They are:

- the Bereavement Authority of Ontario which is responsible for the protection of the public interest and the appointment of inspectors who enforce aspects of the *Funeral, Burial and Cremations Act, 2002*,
- the Condominium Management Regulatory Authority of Ontario which is responsible for providing oversight of condo managers and management companies, protecting consumers, and under whose authority investigators are appointed to enforce aspects of the *Condominium Management Services Act, 2015*,
- the Electrical Safety Authority which is mandated to enhance public electrical safety and appoint investigators responsible for enforcing aspects of the *Electricity Act, 1998*,
- the Ontario Film Authority which is responsible for licensing and film classification services, has oversight responsibility for the Ontario Film review Board, and supervises

investigators who enforce aspects of the *Film Classification Act, 2005*,

- the Ontario Motor Vehicle Industry Council which is mandated to maintain a fair and informed marketplace, protect the rights of consumers, and under whose authority investigators are appointed to enforce aspects of the *Motor Vehicle Dealers Act, 2002*,
- the Real Estate Council of Ontario which regulates real estate salespeople, brokers, and brokerages, protects the public interest, and under whose authority investigators are appointed to enforce aspects of the *Real Estate and Business Brokers Act, 2002*,
- the Tarion Warranty Corporation which is mandated to administer Ontario's New Home Warranty Program, regulate new home and condominium builders in Ontario, and appoint inspectors who enforce aspects of the *Ontario New Home Warranties Plan Act*, and
- the Travel Industry Council of Ontario which is responsible for responsible for the administration of the *Ontario Travel Industry Act, 2002*, the promotion of consumer protection, and under whose authority investigators are appointed to enforce aspects of the *Travel Industry Act, 2002*.[12]

23. The supervisory, investigatory and inspection functions performed by these administrative authorities has been delegated to them under the *Safety and Consumer Statutes Administration Act, 1996*. In its 1998 Annual Report, the IPC observed that the functions of these administrative authorities were previously administered directly by government and therefore the associated records were accessible under *FIPPA*. The IPC noted that the transfer of these functions to non-profit corporations did not change the character of the functions performed and the records created: "the important public safety issues have not changed, so why shouldn't the public continue to have

[12] The other four administrative authorities are the Condominium Authority of Ontario, Ontario One Call, the Technical Standards and Safety Authority, and the Vintners Quality Alliance Ontario.

access to these records? Given that these corporations will also be collecting personal information, the preservation of privacy protection [under *FIPPA*] is also critically important. The IPC attempted to secure these rights when the legislation was passed, but without success." Attached as Exhibit "A" is the relevant excerpt from the IPC's 1998 Annual Report.

24. In addition, this Court's affirmation of the lower court's ruling may, by implication, extend constitutional protection over statutory access rights associated with a range of bodies lawfully empowered to cause deprivations of life, liberty or security of the person. For example, the transparency and accountability principle is likely to have an impact on bodies empowered to use lethal force (e.g. police services), detain accused and convicted individuals (e.g. police and correctional institutions), and take children into protective custody (e.g. children's aid societies).

(iii) The proposed intervention will offer a distinct and relevant perspective grounded in the IPC's experience and expertise

25. The IPC has substantial experience and specialized expertise administering Ontario's access to information statutes in accordance with their underlying purpose, to facilitate an informed public's participation in democracy and the public's ability to hold governments accountable. The IPC serves the vital role of providing independent review of government decisions in furtherance of those purposes. Central to its mandate are issues pertaining to:

- The disclosure of government records necessary for meaningful discussion on matters of public interest and importance, and
- Constraints on the disclosure of information that could interfere with the proper functioning of government.

26. In addition to the above general experience, the IPC also has specific experience relating to requests for law enforcement-related information. Over a period of more than 20 years, the IPC has issued hundreds of decisions that have adjudicated requests for such information. Access to information requests have frequently resulted in the disclosure of information that has triggered public debate and law and policy reform. Two recent examples demonstrate this.

27. Order MO-1989[13] required the disclosure of two electronic databases spanning a period of years containing anonymized information on individuals whom the police had documented ("carded" or "street checked"); information used by the media to examine racial profiling by Toronto police. The disclosure of statistics about street check practices played a significant role in the impetus for and development of street check regulations enacted by the Ontario government in 2016. Attached as Exhibit "C" to this affidavit is a series of media and other reports on the subject matter of the records and related law reform.

28. Similarly, freedom of information requests submitted to police by the media led to disclosures about the handling of "unfounded" sexual assault investigations in Ontario and elsewhere in Canada. These disclosures played a role in police and other authorities embracing new mechanisms to improve the handling of sexual violence cases, including the "Philadelphia" model, which provides for independent review of closed sexual assault cases. Attached as Exhibit "D" to this affidavit are media reports on the subject matter of the records and related reforms.

29. If granted leave to intervene as a friend of the Court, the IPC will bring to the Court experience and expertise which has proven useful to the courts on a number of occasions. The IPC has appeared as an intervener before this Court, the Ontario Superior Court, the Federal Court of

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[13] Order MO-1989 quashed on judicial review in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 225 OAC 238, rev'd 2009 ONCA 20.

Appeal and the Supreme Court of Canada and has made submissions that were of assistance to these courts and distinct from the submissions of other parties, including in cases involving:

Fundamental rights:

- *R. v. Jarvis, 2019 SCC 10*, concerning students' reasonable expectation of privacy at a school where they were the victims of voyeurism as defined under the *Criminal Code*,
- *Toronto Star v. AG Ontario*, 2018 ONSC 2586, concerning whether the application of *FIPPA*'s freedom of information-related privacy protections to the adjudicative records of quasi-judicial tribunals infringes section 2(b) of the *Charter* and the open court principle,
- *ARPA Canada and Patricia Maloney v. R.*, 2017 ONSC 3285, concerning whether the exclusion of all records related to abortion services from the application of *FIPPA* infringes section 2(b) of the *Charter*,
- *Wakeling v. United States of America*, 2014 SCC 72, concerning the section 8 *Charter* right to privacy in wiretap information after its has been lawfully collected, particularly in relation to its subsequent disclosure to a foreign government,
- *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, concerning whether legislation restricting the collection of personal information in the course of lawful picketing infringes section 2(b) of the *Charter*,
- *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the open court principle and whether to grant an order permitting a minor to proceed anonymously in a case implicating her privacy rights,

- *R. v. Emms*, 2012 SCC 74, *R. v. Yumnu*, 2012 SCC 73, *R. v. Davey*, 2012 SCC 75, concerning the collection and use of personal information by the Crown and the police in the jury selection process, the Crown's failure to disclose related information, and the impact on juror privacy, the proper administration of justice and the right to a fair trial,
- *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, concerning the right of access to government-held information as a derivative right of freedom of expression under section 2(b) of the *Charter*,
- *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, concerning a commissioner's authority to abridge solicitor-client privilege, and

The interpretation and application of access and privacy legislation:

- *Canada (Office of the Information Commissioner) v. Canada (National Defence)*, 2015 FCA 56, concerning the jurisdiction of the Federal Court to review a decision by a government institution to extend the time limit for response to a request for access to information,
- *Reference re Municipal Freedom of Information and Protection of Privacy Act*, 2011 ONSC 1495, concerning municipal councillors' right to access the personal information of their constituents,
- *London Property Management Assn. v. London (City)*, 2011 ONSC 4710, concerning whether information identifying individual landlords is "personal information" within the meaning of access and privacy legislation,

- *Tadros v. Peel Regional Police Service*, 2009 ONCA 442, concerning the authority of police to collect and disclose personal information in the course of a police records check, and
- *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, concerning a municipality's authority to collect personal information and disclose it to the police.

(iv) The IPC's submissions will be useful and different

30. If granted leave to intervene, the IPC will make submissions on the hearing of the appeal that will be of assistance to the Court and that will be different from those of the parties and other interveners.

31. The IPC will restrict its submissions to addressing two questions through the lens of the Supreme Court of Canada's principle of fundamental justice test:[14]

- Is there a principle of fundamental justice that requires that organizations empowered by law to deprive individuals of their section 7 *Charter* rights must be subject to reasonable standards of transparency and accountability?
- If so, what are the sources, scope and elements of such a principle?

32. An outline of the IPC's proposed submissions is set out below.

33. Section 7 of the *Charter* dictates that all organizations empowered by law to deprive individuals of their section 7 rights must be subject to reasonable standards of transparency and

[14] *R. v. Anderson*, 2014 SCC 41, at paragraph 29: "A principle of fundamental justice must (1) be a legal principle, (2) enjoy consensus that the rule or principle is fundamental to the way in which the legal system ought fairly to operate, and (3) be identified with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person."

accountability, including bodies whose law enforcement functions are regulatory in nature. In Ontario, these standards are satisfied, in whole or part, through statutes such as *FIPPA*. The transparency and accountability provided for under a statute such as *FIPPA* is a necessary corollary to the transparency and accountability provided for by the courts and other adjudicative bodies.[15]

34. As indicated by the Supreme Court of Canada, a key task in assessing a new principle of fundamental justice is delineating the boundaries of the individual and societal interests that must be accommodated under such a principle.

35. The relevant interests at issue in the appeal are reflected in the Supreme Court of Canada's decision in *R.v. Mentuck.*[16] In that case, the Supreme Court was faced by the imperative of balancing the interests of the public in ensuring effective law enforcement with society's fundamental interest in allowing the public to monitor law enforcement bodies such as the police.

36. An examination of access to information legislation is central to the task of discerning the principle of fundamental justice at issue. The fact that access to information statutes have taken root in every jurisdiction across Canada testifies to the fundamental importance given to these transparency and accountability oriented regimes and the role they play in the Canadian legal system. Legislatures and courts, including the Supreme Court of Canada, have recognized that access to information legislation facilitates meaningful participation in the democratic process and helps citizens hold government officials accountable.[17] Access to information serves these purposes before, during and after elections, frequently without having to resort to costly litigation.

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[15] *Royal Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police.* Chairman: The Hon. Mr. Justice D.C. McDonald, Second Report, Vol. 2: Freedom and Security under the Law (Ottawa: Privy Council Office, 1981); *The Report of the Commission on Freedom of Information and Individual Privacy 1980,* Vol. 2 (Toronto: Queen's Printer, 1980); *R. v. Tse* 2012 SCC 16.

[16] See *R. v. Mentuck*, [2001] 3 S.C.R. 442

[17] *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

While confidentiality with respect to certain functions, decisions and activities is of course necessary, members of the public must be able to challenge government assertions of confidentiality through an independent, impartial and accessible system of justice. Access to information regimes provide the quintessential form of that system of justice.

37. A principle of fundamental justice may be derived from a right or duty already recognized as a constitutional right or norm and must be defined in a way that promotes coherence within the *Charter*.[18]

38. Section 2(b) *Charter* jurisprudence demonstrates that an access to information facilitated transparency and accountability principle has already been recognized as a constitutional right or norm. Key aspects of this principle include the following:

- Subject to countervailing considerations inconsistent with production, individuals have a *Charter* right to obtain access to government held records, including law enforcement records, where a denial of access substantially impedes or effectively precludes meaningful commentary on a matter of public importance,[19]
- The broad brushed exclusion of a class of records from a statutory scheme providing for a right of access contravenes the *Charter* where the exclusion substantially impedes or effectively precludes meaningful commentary on a matter of public importance,[20]
- The right of access must be protected by the following procedural fairness requirements:
    - A government body withholding a record bears the burden of establishing that the information is properly exempt from disclosure,

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[18] *R. v. Lloyd* 2016 SCC 13; *Canada v. Fed. of Law Societies*, 2015 SCC 7.
[19] *Ontario (Public Safety and Security) v. Criminal Lawyers Association*, 2010 SCC 23.
[20] *ARPA Canada and Patricia Maloney v. R.*, 2017 ONSC 3285.

- Such a body is under a duty to act in utmost good faith and must make full, fair and candid disclosure of the facts, including those that may be adverse to its interest,
- Individuals have recourse to independent scrutiny of the body's access decision,
- The independent reviewers (i.e. an information and privacy commissioner and a court on a judicial review application) both have access to the information that is being withheld in order to determine whether an exemption has been properly claimed, and
- At least one of the independent reviewers has the power to order the release of the information if the reviewer determines that the information is not exempt from disclosure.[21]

39. In addition, the Supreme Court of Canada has repeatedly affirmed that as a corollary to the Crown's section 7 disclosure duties, law enforcement officials have a duty to preserve information, exhibits, recordings, investigation notes and any other relevant evidence.[22]

40. Consistent with the Supreme Court's approach of carefully elucidating a principle of fundamental justice so as to delineate the boundaries of the individual and societal interests that must be accommodated under such a principle, the transparency and accountability principle at issue here may be described in the following terms. To comply with this principle, law enforcement bodies empowered to deprive individuals of their section 7 *Charter* rights must be subject to statutory standards of transparency and accountability that provide for:

- A law enforcement body's duty to preserve its records and only destroy them pursuant to written record retention schedules or other legal requirements,

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[21] *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3.
[22] *R. v. La*, [1997] 2 S.C.R. 680; *Charkaoui v. Canada (Citizenship and Immigration)*, [2008] S.C.J. No. 39; and *Canada (Citizenship and Immigration) v. Harkat*, [2014] S.C.J. No. 37.

- An individual's right to request access to general information, as well as their own personal information, in a law enforcement body's custody or control,
- An individual's right to obtain that information subject to a reasonable framework of statutory exemptions and exclusions,
- A law enforcement body's duty to meet its burden of proof, act in utmost good faith, provide a timely written access decision, and exercise its powers of decision reasonably, including by considering the public interest in disclosure, and
- An individual's right to appeal the law enforcement body's decision (including a lack of a decision) to an independent adjudicator with authority to review the records and order their release if the reviewer determines, after hearing from the parties, that the information is not exempt or excluded from disclosure.

41. The transparency and accountability standards described above constitute a legal principle that is reflected in access to information legislation in Ontario and across Canada.

42. The comprehensive, pan-Canadian adoption of access to information legislation provides significant evidence that there is a strong consensus that the transparency and accountability principle is both fundamental to our societal notion of justice and that it is a principle capable of being identified with precision and applied to situations in a manner that yields predictable results.

43. Further support for the proposition that the transparency and accountability principle is a vital, precise and predictable legal principle is found in international law.

D. Conclusion and order requested

44. The IPC's proposed submissions are intended to assist the Court in arriving at an informed decision without causing injustice to the parties.

45. The Attorney General and Jeffrey Bogaerts have consented to the IPC's proposed intervention.

46. The IPC respectfully requests that it be granted leave to intervene in this appeal as a friend of the Court, with the right to file a 15 page factum by June 19, 2019 - or such other time as is agreed by counsel and acceptable to the Court - and make 15 minutes of oral argument at the hearing of the appeal.

47. If granted leave to intervene, the IPC will:

- Confine its submissions to the issues set forth above,
- Not take a position on the ultimate disposition of the appeal,
- Not seek leave to file any new evidence, but rely on the record before the Court,
- Work with counsel for Jeffrey Bogaerts and the other intervener(s) to ensure that our submissions are not duplicative, and
- Not seek costs and ask that no costs be awarded against it.

SWORN BEFORE ME at the)
City of Toronto, in the Province)
of Ontario, this 23rd day of May 2019)
)

Brian Beamish

Stephen McCammon
A Commissioner of Oaths, etc.

THE ATTORNEY GENERAL OF ONTARIO - and - **JEFFREY BOGAERTS**

Respondent
(Appellant in Appeal)

Applicant
(Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

AFFIDAVIT OF BRIAN BEAMISH ON THE MOTION FOR LEAVE TO INTERVENE
(Sworn May 23, 2019)

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO
Suite 1400, 2 Bloor Street East
Toronto, ON M4W 1A8

Stephen McCammon, LSO #37502R
Tel.: (416) 326-1920
Fax: (416) 325-9186
E-mail: stephen.mccammon@ipc.on.ca

Lawyer for the Moving Party
Information and Privacy Commissioner of Ontario

TAB A

This is Exhibit A to the Affidavit
of Brian Beamish
sworn this 23 day of May 2019

A Commissioner etc.

Information and Privacy Commissioner/Ontario

ANNUAL REPORT 1998

The Purposes of the *Acts*

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

a) To provide a right of access to information under the control of government organizations in accordance with the following principles:

- information should be available to the public;
- exemptions to the right of access should be limited and specific;
- decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.

b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.

ISSN 0847-0634

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

The Honourable Chris Stockwell,
Speaker of the Legislative Assembly

I have the honour to present the 1998 annual report of the Information and Privacy Commissioner/Ontario to the Legislative Assembly.

This report covers the period from January 1, 1998 to December 31, 1998.

Sincerely yours,

Ann Cavoukian, Ph.D.
Commissioner

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Role and Mandate

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an Information and Privacy Commissioner as an officer of the Legislature to provide an independent review of the decisions and practices of government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario. The Commissioner is independent of the government of the day in order to ensure impartiality.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The Information and Privacy Commissioner (IPC) plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; colleges of applied arts and technology; and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to the activities of government, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information – that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect, and disclose personal data. In addition, individuals have a right to see their own personal information and are entitled to have it corrected if necessary.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has five key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government-held information;
- ensuring that government organizations comply with the *Acts;*
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access and privacy laws and access and privacy issues.

In accordance with the legislation, the Commissioner delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner and selected staff were given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints. Under the authority of the Commissioner, government practices were reviewed, and proposed inter-ministry computer matches commented on.

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Access and Privacy Today

New legislation and other steps taken by some government organizations are beginning to erode access and privacy rights in Ontario.

The *Freedom of Information and Protection of Privacy Act,* which came into effect January 1, 1988, and the *Municipal Freedom of Information and Protection of Privacy Act,* effective January 1, 1991, established the basic rights of access to government-held information and the obligations imposed on provincial and municipal government organizations for the proper treatment of personal information in their custody and control.

However, since that time, specific exclusionary provisions, the outsourcing and privatization of some government functions, and new legislation overriding aspects of freedom of information and protection of privacy legislation are impacting on access and privacy rights of Ontarians.

Exclusions

One primary concern of the IPC is legislation or programs that exclude information or records from the scope of the *Acts.* When this happens, access and privacy rights are compromised, and the right of review by an independent body, the IPC, is lost.

One piece of legislation that excludes records from the *Acts is the Labour Relations Act, 1995* (Bill 7). Its stated purpose is "to restore balance and stability to labour relations and to promote economic prosperity." However, very broadly drafted provisions in the new law exclude many employment-related records about public sector employees, including records that do not have any bearing on labour relations. As a result, public sector employees may be precluded from obtaining access to employment-related records about themselves, and from making a privacy complaint if their personal information is improperly used or disclosed. These new provisions have been interpreted in a number of IPC orders, and records excluded from the *Acts* have been found to include the requester's personnel file, records relating to the requester's retirement, records about job competitions, and harassment investigation files, among others.

This approach to information about employees is not in keeping with world-wide trends favouring fair information practices, and in particular, the protection of personal privacy. Examples of this trend include the privacy directive of the European Union, the adoption of Fair Information Practice Codes by many private sector enterprises, the recently adopted information and privacy laws in other Canadian provinces such as Alberta and Manitoba, the extension of privacy protection legislation to the private sector in the Province of Quebec, and the recent introduction of Bill C-54, the *Personal Information and Electronic Documents Act,* by the federal government, extending the application of privacy laws to the privacy sector.

Fees

Another step that has had an impact on the number of Ontarians using access and privacy legislation was the introduction of an amended fee structure for access requests in 1996.

The government has frequently stressed the importance of user-pay, a principle which has found wide acceptance among members of the public. This approach has been applied to the *Acts* as a result of changes brought about by the *Savings and Restructuring Act,* 1996 (Bill 26). A $5 fee for each access request is now required, including requests for a person's own personal information, and appeal fees ($10 or $25, depending on the type of appeal) have also been imposed. The two hours of free search time was also eliminated as part of this new fee structure.

These new fee provisions have had a dramatic impact on the public's use of the *Acts*. From 1995 (the last year before the new fees were introduced) to 1998, the number of requests declined by 25% In the same period, appeals declined by 56%.

The sheer size of the decrease in the number of requests and appeals compels us to question whether the new fees have gone too far, particularly the appeal filing fee.

The IPC supports the user-pay principle, and observes that some reduction of requests and appeals may result from the elimination of questionable use of the *Acts*. As well, the IPC welcomes the increase in routine disclosure by government organizations of frequently requested information – which has also been a factor in the reduction of requests. However, the removal of certain kinds of information from the scope of the *Acts*, under legislation such as the *Labour Relations Act*, 1995 has had an impact as well. The sheer size of the decrease in the number of requests and appeals compels us to question whether the new fees have gone too far, particularly the appeal filing fee. The right of access to government information is an important accountability mechanism, and it is unfortunate that use of this avenue appears to have declined, at least in part, as a result of the new fee structure.

Privatization and Alternate Service Delivery

The transfer of government enterprises to the private sector or to other independent bodies is another way that access and privacy rights can be lost or reduced. For example, under the *Energy Competition Act, 1998*, Ontario Hydro has been divided into five separate corporations. Two of these, the Ontario Electricity Generation Corporation and the Ontario Electric Services Corporation, have not been scheduled as institutions under either of the *Acts*, despite the fact that, in the past, all of Ontario Hydro has been covered. IPC Order P-1190, upheld by the Ontario Court of Appeal, illustrates why continued access to information in Ontario Hydro's possession remains important. Based on a provision of the legislation that permits the IPC to do so where it is in the public interest, the IPC ordered disclosure of records which assessed the safety of several nuclear power plants in Ontario.

The IPC met with representatives of Ontario Hydro and the Ministry of Energy, Science and Technology to discuss our concerns. The government has not agreed to make these new corporations subject to the Acts.

The *Safety and Consumer Statutes Administration Act, 1996*, may also reduce access and privacy rights. This law provides for supervisory or inspection functions in a number of areas, including elevators, amusement rides and gasoline handling, by independent non-profit corporations. These particular functions were previously administered directly by the government, and associated records, including inspection reports, were therefore accessible under the provincial *Act*. Now that the administration has been transferred to an independent corporation, this may no longer be the case. The important public safety issues have not changed, so why shouldn't the public continue to have access to these records? Given that these corporations will also be collecting personal information, the

preservation of privacy protection is also critically important. The IPC attempted to secure these rights when the legislation was passed, but without success.

Protected Rights

Not all the news about the impact of new legislation on access and privacy rights is worrisome, however. The Ministry of Community and Social Services, working closely with the IPC, incorporated extensive privacy safeguards into the *Social Assistance Reform Act* in 1997. Among legislation enacted during 1998, the *Highway 407 Act, 1998*, and the *Legal Aid Services Act, 1998*, are good examples of new laws where steps where taken to protect access or privacy rights. The IPC suggested amendments to the *Highway 407 Act, 1998*, to ensure that the privacy of users of the electronically monitored highway would be protected, and also suggested that the agreement transferring the highway should require the new owner to adhere to the spirit and intent of the provincial *Act*. These suggestions were agreed to and adopted by the government. The bill was amended in committee.

The *Legal Aid Services Act, 1998*, makes fundamental changes to the way that Legal Aid is delivered in Ontario. Formerly administered by the Law Society of Upper Canada, Legal Aid will now be run by a new corporation called Legal Aid Ontario. The IPC commented on several sections that covered the collection of personal information from applicants for Legal Aid, and required lawyers to give client information to Legal Aid Ontario. Our suggestions were aimed at protecting personal privacy as well as solicitor-client privilege. The vast majority of our recommendations were adopted, and, as a result, these important rights were enhanced for all Legal Aid applicants and recipients in Ontario.

Looking Forward

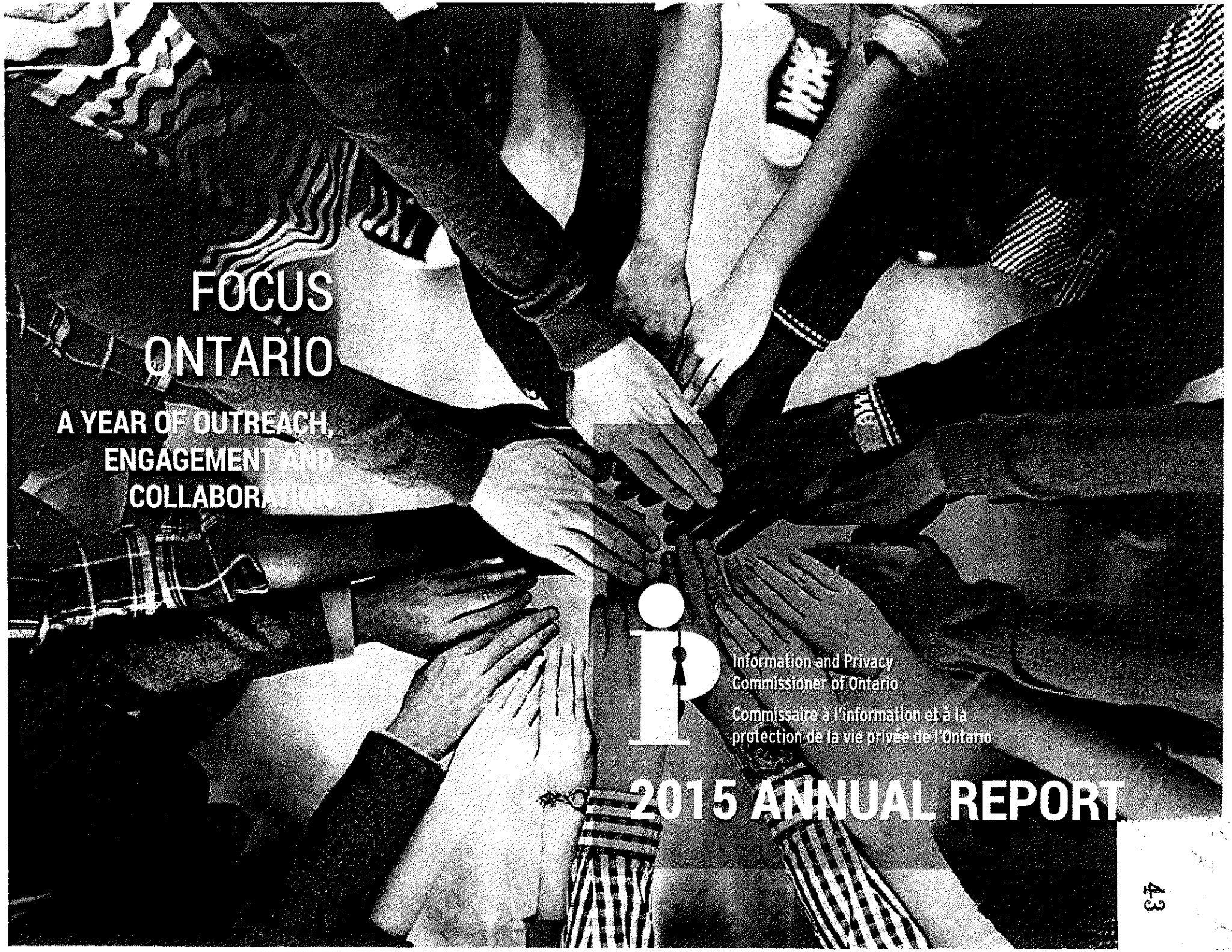
A number of recommendations by Commissioner Ann Cavoukian are included in the *Commissioner's Recommendations* section, immediately following.

This approach to information about employees is not in keeping with global trends favouring fair information practices, and in particular, the protection of personal privacy.

TAB B

This is Exhibit B to the Affidavit
of Brian Beamish
sworn this 23 day of May 2019

A Commissioner etc.



FOCUS ONTARIO

A YEAR OF OUTREACH, ENGAGEMENT AND COLLABORATION

Information and Privacy Commissioner of Ontario

Commissaire à l'information et à la protection de la vie privée de l'Ontario

2015 ANNUAL REPORT

June 27, 2016

The Honourable Dave Levac
Speaker of the Legislative Assembly of Ontario

Dear Speaker,

I have the honour to present the 2015 Annual Report of the Information and Privacy Commissioner of Ontario to the Legislative Assembly.

This report covers the period from January 1 to December 31, 2015.

Please note that additional reporting from 2015, including the full array of statistics, analysis and supporting documents, may be found within our online Annual Report section at www.ipc.on.ca.

Sincerely yours,

Brian Beamish
Commissioner

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Commissioner's Recommendation: Modernize Ontario's Privacy and Access Legislation

It has been almost thirty years since *FIPPA* and *MFIPPA* came into force. Since that time, public expectations, technologies and the ways in which government does business have changed. In other provinces, access and privacy laws have been strengthened to meet the challenges of modern society. It is time for Ontario to do the same. We are calling on the Ontario government to undertake a comprehensive review of *FIPPA* and *MFIPPA* through an open process that encourages public participation. Now is the time to update the acts and ensure that the access and privacy rights of Ontarians are protected in our changing environment.

Expand Coverage Under the Act

Since the acts were introduced, government has changed the way it delivers public services. Increasingly, services are outsourced or delivered by public-private partnerships, arms-length agencies, delegated administrative authorities, self-funded agencies, or other service delivery models. Regardless of their status, these organizations are responsible for delivering services to the public and have corresponding duties and responsibilities.

Decisions about which organizations are covered by the acts have been made on a case-by-case basis and at various points in time, resulting in inconsistent levels of accountability and transparency.

Unless there are unique and compelling reasons not to, an organization should be covered under the acts if:

- it receives a significant amount of its operating funds from the government
- it delivers a program designed to support government objectives
- the government plays a significant role in its policy development and operational direction

FIPPA and *MFIPPA* should be amended to ensure a consistent approach that allows for the creation of new service delivery models that do not weaken access and privacy rights.

Amend the Acts to Address Changing Communication and Information Technologies

New technologies have also changed the way we share, analyze and store information. It is critical that a review of the acts examine and deal with the impact of technology on access and privacy rights.

For example, the widespread use of instant messaging, and personal devices and accounts, creates a risk that business records are not properly created and stored. This could mean that information

TAB C

This is Exhibit C to the Affidavit
of Brian Beamish
sworn this 23 day of May 2019

A Commissioner etc.

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News

Singled out

A 2002 Star series based on analysis of police crime data showed justice is different for blacks and whites.

By: **Jim Rankin** Feature reporter, **Jennifer Quinn** News reporter, **Michelle Shephard** National Security Reporter, **Scott Simmie** and **John Duncanson** Toronto Star, Published on Sat Oct 19 2002

This article originally appeared in the Toronto Star Oct. 19, 2002.

Blacks arrested by Toronto police are treated more harshly than whites, a Toronto Star analysis of crime data shows.

Black people, charged with simple drug possession, are taken to police stations more often than whites facing the same charge.

Once at the station, accused blacks are held overnight, for a bail hearing, at twice the rate of whites.

The Toronto crime data also shows a disproportionate number of black motorists are ticketed for violations that only surface following a traffic stop. This difference, say civil libertarians, community leaders and criminologists, suggests police use racial profiling in deciding whom to pull over.

The evidence is contained in a massive police database recording more than 480,000 incidents in which an individual was arrested, or ticketed, for an offence dating back to 1996. It included almost 800,000 criminal and other charges. The Star obtained that data through a freedom of information request, marking the first time access to these numbers was granted to anyone outside the police community.

Police are forbidden, by their governing board, from analyzing this data in terms of race, but The Star has no such restriction. The findings provide hard evidence of what blacks have long suspected - race matters in Canadian society especially when dealing with police.

Chief Julian Fantino disputed the findings, saying the colour of a person's skin has nothing to do with how they're treated by his officers.

"We don't treat people differently," he said in an interview yesterday. "Nor do we consider the race or ethnicity, or any of that, as factors of how we dispose of cases, or individuals."

The chief emphasized the need to understand all the elements that affect policing and crime rates. Environmental, economic and social conditions "all are factors beyond our control that clearly, in certain areas (and) circumstances require a police response," he said.

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"You don't know the origin of these arrests, you don't know the socio-economic circumstances involved. You don't know the other factors that play into why people have encounters with police.

"We're not perfect people but you're barking up the wrong tree. There's no racism."

And, Fantino emphasized, "we don't do profiling."

But Toronto's black community has long worried about being singled out by police - especially its young black men.

"I don't think a day will come, in my lifetime, when I won't be profiled or identified for who I am, and what I am," said Jason Burke, 28.

Employed as a buyer in the fashion industry, Burke is suing Toronto police after being accused of dealing drugs, pushed to the ground, pepper sprayed and forced to rinse his burning eyes in toilet water while in custody. He was held for three days.

No drugs were found. All charges against him were dropped just before he was due for trial.

"I was violated that night for no good reason," Burke said, adding that just being black puts young men at risk of undue attention from police.

Nowhere in Canada has debate over keeping, and analyzing, race-based crime data been as angst-ridden as in Toronto - a city boasting of its multicultural identity with a motto declaring diversity its strength. Latest census figures show that blacks make up 8.1 per cent of the city's population.

Fantino said his department has a good relationship with Toronto's many ethnic communities. "We're working well."

Last week, the force accepted an international award as one of the leading policing agencies in promoting civil rights and enhancing relationships with the city's communities. Fantino accepted the award at the International Association of Chiefs of Police annual conference in Minneapolis.

Yesterday, he told The Star that good relations have included a commitment to avoid collecting race-based crime statistics that might cast some groups in a negative light. "We don't keep (that) data. We're not supposed to."

Toronto's police board banned the keeping of statistics linking race and crime in 1989. It was feared that such information would be used to reinforce racist stereotypes and label certain ethnic communities as criminal.

The board acted after Fantino, then a staff inspector, triggered a controversy by reporting to a race relations committee that blacks accounted for most crime in the Jane-Finch area.

The community erupted in outrage, underlining the taboo that surrounds collection of these statistics.

While Toronto was rejecting such data, police and lawmakers in the United States and Britain were adopting an opposite strategy, embracing the numbers as a way of shedding light on racial bias.

Toronto officers have complied with the police board's order and don't collect crime statistics for the purpose of ethnic analysis. Arrest documents, however, do record descriptions of most people charged. And that usually includes their skin colour and place of birth.

Using these arrest records, The Star conducted an in-depth investigation of how minorities are treated by police. The database, showing every arrest in the city, from late 1996 to early this year, was subjected to extensive computer analysis. Results were submitted to an independent consultant who checked The Star's methodology and pronounced it sound.

To measure differences in treatment of blacks and whites, The Star focused on Toronto's more than 10,000 arrests for simple drug possession over the six-year period.

Most people arrested on this charge - 63.8 per cent - were classified by police as being white. About a quarter - 23.6 per cent - were described as black.

Remaining skin colour classifications in the database are "brown" and "other." In most cases "brown" is used to refer to people of South Asian descent while "other" mainly represents people of Chinese and other Far Eastern origin. Together, these racial categories accounted for barely 12 per cent of simple drug possession charges, and analysis showed "browns" were released in much the same way as whites, while "others" were treated more like blacks.

Simple possession of an illegal drug was chosen for study since it's a relatively minor crime, as opposed to trafficking. That makes simple possession a "high-discretion" charge, meaning police officers at the scene of an arrest, and in a police station, have considerable leeway on how they handle a suspect.

A person could be charged with drug possession on the street and simply sent home with instructions to later report to a police station to be fingerprinted and to appear in court.

Or a person is brought to a police station for immediate booking and then released.

Or the suspected person could be taken to a station, booked, and held overnight in jail for a bail hearing, where a judge would determine conditions of release.

It's up to officers to decide.

And six years of internal police records show their decision has often fallen harder on blacks than on whites.

Most people charged with simple drug possession were free to go home, on a promise to appear in court and at a police station. Whites were released on the scene 76.5 per cent of the time while blacks were released 61.8 per cent of the time.

The difference in treatment was even more apparent at the next level of police decision-making. Of those taken to the station, blacks were held behind bars for a court appearance 15.5 per cent of the time. Whites were kept in jail awaiting a bail hearing in 7.3 per cent of cases.

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The Star also looked at traffic data, focusing on "out-of-sight" offences such as failing to update a driver's licence or driving without insurance.

Police usually discover such violations only after a motorist has been pulled over. And, in the absence of any other charge, it isn't clear why drivers involved in these offences are stopped in the first place. The rate at which minority drivers are charged under these conditions has become a bellwether in the United States for racial profiling - the practice of targeting racial minorities on the assumption they commit more crimes.

The Star analysis of the police traffic data shows a disproportionate number of blacks charged compared to whites. A detailed look at the data will be published in tomorrow's Sunday Star.

Fantino was emphatic in declaring his force had no use for racial profiling and that he was firmly opposed to such practices.

"We don't do profiling at this police service - we never have and we will not do it," he said. "We respond to activities. We don't know, at the front end of anything, who we're dealing with."

The Star's analysis "doesn't reflect the reality of what we're dealing with here," Fantino said. "It doesn't make any sense."

But University of Toronto criminologist Scot Wortley, an expert on race, crime and policing in this city, said The Star's findings provide clear evidence of what, until now, has been based largely on assumption.

"It's an important contribution," said Wortley, who has studied racism within the justice system and found blacks in Toronto are denied bail more often than whites, due in large part to negative assessments made by arresting officers. "It shows that police influence extends from the street into the courtrooms."

The pattern is familiar to Bev Folkes through anecdotal evidence - stories of how a white boy caught breaking the law gets a ride home, while the black kid is taken to the station.

"We've seen this," said Folkes, of the Black Inmates and Friends Assembly. "I say that with no reservation. One of the phrases guys use in prison is: 'It's not justice - it's just us.' And, somehow, you can believe it."

In analyzing drug charges, The Star took into account a number of factors that might influence police decision-making, including a suspect's age, criminal history, employment, immigration status, and whether or not the person had a home address. But different handling of blacks and whites - with similar backgrounds - remained consistent.

Why?

Black community leaders, civil libertarians, and lawyers who regularly defend clients involved with police, say the answer is simple: police discrimination against blacks.

"We have long suspected police bias," said Alan Borovoy, counsel to the Canadian Civil Liberties Association.

Racism is evident at all levels of Canadian society, said Borovoy, but it's especially worrisome in a police force, since officers are a powerful group exercising a great deal of authority.

"We give police so much more power over us than we do other sectors of society," Borovoy said. "That's why any hint of racism in the police department becomes all the more disturbing."

He is calling for creation of a provincial body with power to independently audit police files, at any time, to ensure officers aren't engaged in racial profiling or showing bias in arresting minorities.

Such bias can sting well after a charge is laid.

Criminologist Wortley studied the treatment of people in two Toronto bail courts and found blacks were 1.5 times more likely to be detained than whites. His results were published in the British Journal of Criminology earlier this year.

Wortley, and co-author Gail Kellough of York University, examined court records involving 1,800 criminal cases. They were also allowed to look at confidential crown briefings, including notes from arresting officers about an accused.

"We found that officers write much more powerful character assassinations of black defendants than white defendants," Wortley said. "Things like: 'He's an a—hole. He's psychotic. He's a threat to society.'"

Crown attorneys put great store in an officer's assessment, concluded Wortley. The harsher an officer's assessment, the greater the odds an accused would be denied bail.

And, with no chance of bail, an accused is far more likely to plead guilty, he said.

A 1995 Ontario commission also found blacks, accused of drug offences or robbery, were three times more likely to be refused bail than whites facing the same charge.

The Commission on Systemic Racism in the Ontario Criminal Justice System sampled Toronto police files from 1989 and 1990 and found that white people were "significantly more likely" to be released after their arrest than blacks.

Jason Burke's release didn't come easy.

The young black man's problems began while celebrating a birthday, with friends, during Caribana two years ago. While walking in a laneway, from one downtown nightclub to another, Burke, then 25, and a friend were challenged by two white police officers. They accused Burke of selling drugs to his companion, and one officer grabbed his wrist.

"I said, 'What are you talking about? Who told you that?'"

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One officer said their information came from two doormen at a club just a short distance away. Burke happened to know those men, and he slipped from the officer's grip and ran to them to ask if they had claimed he was a drug dealer. They denied telling police any such thing. Burke returned to officers in the laneway and loudly accused them of unfair arrest. "I was furious. I was screaming."

More police arrived and he was pushed against a wall, then he fell to the ground. He stiffened his body, "like rigor mortis," to avoid being handcuffed and was pepper sprayed in the face. "I wasn't able to resist any longer."

Taken to a police station, he was charged with threatening bodily harm, resisting arrest, escaping custody, and causing a disturbance. And he was kept in jail for three nights - two of them at the Toronto (Don) Jail. While at the station, he pleaded for water to rinse pepper spray from his eyes but was denied. Eventually, desperate for relief, he rinsed his eyes with toilet water.

No drugs were found in Burke's possession. No drugs were found in the laneway. And his friend, the suspected drug buyer, wasn't charged with anything.

Burke prepared to clear his name at trial, convinced his skin colour was the only reason officers had given him unfair attention. "I was profiled."

Just before his case was to start last February, he was told all charges against him were dropped.

Now he's suing the police force, seeking $2 million for malicious prosecution, negligence, assault, and violation of his rights and freedoms. His statement of claim contains unproven allegations that have not yet been tested in court.

"I don't want to live in fear," Burke said. "I have to show that people can't take advantage of me."

"Most people join the police force to do good work," said Barry Thomas, senior consultant with the Urban Alliance on Race Relations. "Most police officers are good people, they don't get up in the morning to say, 'Whoa, it's a good day to be a bigot.'

"So how is it they end up, every day, having more people of one race in jail than another?"

Thomas blames lingering racial stereotypes, and a stubborn police culture that didn't keep pace as Toronto evolved from a staid Anglo community into a world leader in diversity.

The force's main strategy to improve race relations centres on hiring more people from visible minorities. But it lags far behind in such hiring, said Thomas. And, of those already recruited, very few are being promoted into senior, more visible jobs.

Last year, 51 of 332 recruits - or 15 per cent of the total new hirings - represented visible minorities in one of the world's most multicultural cities. This year, only 11 per cent of the class is a visible minority. The force could not tell The Star how many of those recruits are black. Nor could it say how many black officers are currently on staff.

Thomas, who works in the pro bono office of the Law Society of Upper Canada, said a deep-rooted police subculture poses a barrier to minority officers.

"If you want to push black issues you won't get promoted. And the (black officers) who do get promoted are basically promoted because they buy into the police subculture."

Julian Falconer, Burke's lawyer and a prominent race relations and policing activist, said he regularly hears from black parents afraid for their children at the hands of police, not because they are law-breakers but because their skin colour puts them at risk.

He credited police commanders, like Fantino, with good intentions, adding they sincerely want to cleanse racism from the system. "The problem is, they have no idea how to fix it."

Treatment differs by division

If you're caught with cocaine in Toronto's downtown entertainment district, chances are you'll walk away with a ticket to appear in court. Get caught in Regent Park, and you're much more likely to take a ride to the station and be held in jail.

Six years worth of drug arrest data, obtained and analyzed by The Star, shows officers in low-income, heavily policed areas go harder on the people they arrest for simple drug possession than officers in other divisions.

The Star looked at how police released over 10,000 people facing a single count of simple drug possession and found, city-wide, blacks were treated more harshly than whites. The difference in treatment became greater, and more harsh, depending where, and in which of the city's 16 policing divisions, the arrest took place.

In 51 Division - a busy downtown station that has struggled to build bridges with a multicultural community - those charged with possessing cocaine are treated more harshly than anywhere else in the city.

Since 1997, just over 40 per cent of blacks charged with one count of cocaine possession were held for a bail hearing, while only 20 per cent of whites were locked up until they could be brought to court.

Head west one police district into 52 Division - home to the entertainment district, financial core and a growing number of condo dwellers - and the treatment is amongst the most lenient of any division in the city. Just over 15 per cent of blacks were kept overnight in that police district, versus 8.8 per cent of whites.

Go west one more division, into Parkdale's 14 Division, and blacks were held for a bail hearing 24.7 of the time, while whites were held 16 per cent of the time.

Although far fewer people were detained or held for bail hearings, similar, station-to-station patterns were in place for those charged with possession of marijuana.

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News

Racial data a hot potato

Even among activists an old debate rages: Can statistics do good as well as harm? From the Star's 2002 Race and Crime series.

Published on Sat Oct 26 2002

This story originally appeared in the Toronto Star on Oct. 26, 2002.

Some want to look. Others would rather turn away.

They're just figures on a page, but race-based crime statistics are nitro-glycerine numbers, brimming with explosive power and potential for harm.

Toronto police aren't allowed to compile or publish this volatile material because it's thought documenting crime rates by racial category could fuel bigotry, especially against ethnic groups already struggling against hard-set prejudice.

But there is disagreement over that ban, even among crime researchers, black activists and civil libertarians dedicated to fighting racism.

A look at this arrest data could provide evidence of police discrimination, says Barry Thomas, a senior consultant for the Urban Alliance on Race Relations, a research and advocacy group.

"The fact of the matter is, if we had statistics and we had well-collected, well-supplied information, then we'd be way ahead of the game, " he says.

But Atoni Shelton, who was director of the urban alliance for most of the 1990s, says he hopes Toronto doesn't follow the American trend to allow police to disseminate crime data based on race.

"We unequivocally refute the need to keep race-crime stats. You leave yourself open to making policy according to race, " Shelton said.

"And if that's what we have become about, then that says a whole lot about how far we have gone down the road of becoming more like the Americans."

The Star reopened debate on use of these numbers by performing analyses of police records and finding that blacks and whites are treated differently in Toronto. Police department officials have reacted with outrage.

The official taboo on using race-based crime statistics began in 1989, when an earnest police staff inspector named Julian Fantino explained to the North York race relations committee that blacks accounted for most crime in the Jane-Finch area but were only a fraction of the population. His source was the department's own arrest records.

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"When the blacks hurt, I hurt, " Fantino said, adding that he, too, as an Italian immigrant, had felt the sting of discrimination. "I want changes here."

At first there was stunned silence. Then, one by one, the committee members absorbed what the senior officer had just brought to the table, and their shock turned to outrage.

"I resent the implication that's there - that all blacks are criminals, " said Al Mercury, a founding member.

"Disgusting and racist garbage, " was how a spokesperson for the Jane-Finch Concerned Citizens Organization responded.

Committee members were on their feet, castigating the man who would, more than a decade later, be appointed the city's chief of police.

The reaction underlined the taboo that surrounds any analysis of crime data focused on race. After the uproar, the Metro police commission banned use of race-based arrest statistics. Officers are directed that they may not "compile or publish statistics relative to race, colour or creed of individuals involved in criminal activity, except as approved by the board."

While the department's arrest records contain data on the race and ethnicity of thousands of people charged by police, the force doesn't keep statistics on ethnic groups. Skin colour is a basic part of a suspect's description, but since 1989, officers haven't been able to mine that data to see which ethnic communities are being arrested.

Many black activists and leaders oppose such analyses, and worry that arrest records don't accurately reflect who is breaking the law, but rather who is being picked on.

They argue that racial profiling by officers is common and that it lays the burden of arrests on the black community. Disclosing arrest statistics by race would only add to the injury - labelling the community criminal, boosting prejudice and inviting even more police crackdowns, they say.

But raced-based crime figures are a statistical sword that can cut two ways. Others argue that, if racial profiling drives up arrest numbers, then those figures could also constitute valuable evidence of how certain ethnic groups are singled out by police.

Evidence of profiling is essential if the corrosive practice is to be stopped, Thomas said. But proof is hard to find, and police data could be a vital tool in winning justice.

"There's this whole big bogeyman of race-crime statistics, " he said. "In Canada, we somehow want to do the politically correct thing, so we don't collect it."

Ironically, the North York Committee on Race Relations, the same group that castigated Fantino in 1989, recently asked the chief to order officers to document the race of motorists being pulled over - as a key to discovering whether minorities are being targeted. So far, there has been no police department response.

News

Star's statistics analysis holds up to fair scrutiny

A 2003 response from then-publisher John Honderich, to criticism of the Star's 2002 series Race and Crime. Accompanied by a Star Q&A.

By: John Honderich Chair of the Board, Published on Sat Mar 01 2003

This column by John Honderich, then the Star's *publisher, originally appeared in the* Toronto Star *on March 1, 2003.*

Credibility and trust are a newspaper's oxygen.

Without both, a paper cannot maintain the necessary bond with its readers and advertisers.

Which is why we cannot remain silent in the face of harsh criticism from the Toronto police about our recent series on race and crime. To say nothing on such a critical and sensitive issue might, in some circles, be misinterpreted.

Let me be clear: The Star stands 100 per cent behind our research and work. The police force begs to differ - and in very strong words.

"Junk science" and "irresponsible and bogus slurs."

Those are just two of the condemnations raised during a presentation by criminal lawyer Alan Gold and sociology professor Ed Harvey, both hired by police Chief Julian Fantino.

At a meeting of the Police Services Board last week, Harvey declared "the independent review results do not provide evidence of systemic racial profiling being practised by the Toronto Police service."

So, did we get it wrong?

Is our analysis worthy of the "junk science hall of fame," as the police Web site so pithily charges?

No, to both counts.

First, I feel it essential to remember exactly what our stories did say. And, just as important, what they didn't.

From the arrest data gathered by the force itself from 1996 to 2002, our analysis found that blacks charged with simple drug possession were taken to a police station more often than whites facing the same charge. Once at the station, twice as many black suspects were held overnight for bail as whites.

A second analysis of traffic offences showed a disproportionate number of blacks received tickets for non-moving traffic offences.

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Those were the findings we presented. Nothing more.

What we didn't do is draw any firm conclusions from the material. Our series didn't say racial profiling is regular police practice.

Nor did we say the police force is full of bigots.

What we pointed out is a significant difference in treatment of blacks and whites when it comes to two sets of crimes.

I'm the first to admit those findings certainly nudge one to draw certain conclusions - conclusions many in this city have already come to believe as fact.

Indeed, the finding of difference of treatment based on race is hardly new.

Over the years a host of reports and studies - Walter Pitman (1977), Cardinal Emmett Carter (1979), Reva Gerstein (1980), Clare Lewis (1989), Stephen Lewis (1992), Race Relations Audit (1992), Judge David Cole and Margaret Gittens (1995) - came to the same conclusion.

Two weeks ago, a senior crown attorney declared racial profiling exists. Last week, Ontario Superior Court Judge Casey Hill said that systemic racism in our police and justice system must be taken into consideration in sentencing black offenders.

And, four days ago, the province took a small step by announcing that it would open a storefront police complaints office to make the process more accessible.

This is certainly where we would prefer the attention be focused - rather than disputing whether a problem exists.

What makes our stories so compelling, I would suggest, is that they derive directly from the force's own database of arrests over a six-year period.

What about our figures? Are they wrong?

We think not.

And our confidence is based on the independent evaluation of an internationally renowned statistician, Dr. Michael Friendly of York University, who has examined the same data, scrutinized our methodology, and double-checked our findings. Nonetheless, the police representatives insist we're seriously wrong.

Such a disagreement over statistics risks degenerating into a battle of experts - theirs vs. ours. However, we do take some solace that Dr. Friendly's entire career and writings are in the field of statistical analysis.

When all is said and done, however, this issue is too important to be left in statistical limbo.

To that end, we provide [below] a question-and-answer that deals with many of the questions raised.

We commit now to take our analysis to other statisticians, to triple-check our analysis.

We commit to ferret out as many experts as needed to give an intelligent explanation of our analysis.

We commit to carry on.

We will not be deterred.

This city and its citizenry deserve nothing less.

The Star's response to critics

On behalf of Toronto police, lawyer Alan Gold and University of Toronto professor Edward Harvey last week challenged aspects of a Star series examining race and crime. A summary posted on the official police Web site labels the newspaper's findings "bogus" and "junk science." In the interest of furthering debate on the issue of race relations and policing, the Star offers the following response:

Q In its series, published last fall, does the Star claim to have proven there's "systemic and ubiquitous racial bigotry infecting the Toronto Police Service throughout, " as alleged by the newspaper's critics?

A No such claim was made. After an analysis of police data, the newspaper concluded there was evidence that blacks and whites, charged with certain offences, weren't being treated the same way by police. At no time did the Star claim discrimination was universal, ubiquitous, or official police policy.

Q Is the Star's analysis "junk science"?

A No. It's a thorough study using the police department's own numbers, reviewed and pronounced sound by an independent expert. It's a start. Analysis of race and policing is an emerging science and is constantly evolving.

Q Both sides are working with the same raw data, so why are the Star's results so dramatically different from conclusions reached by Harvey?

A While both sides started with the same database, they've looked at it in different ways. For example, the Star analyzed arrests and charges over the entire city to see how blacks and whites are treated. Harvey, by contrast, excluded half of Toronto's 16 police divisions from detailed analysis. Divisions with a black population of less than 6 per cent were dropped. Harvey said he considered the black community in these areas too small for valid analysis. But that research strategy has problems, warns University of Toronto criminologist Scot Wortley. Blacks in predominantly white residential areas could be subject to unusual police scrutiny. Areas such as the nightclub district or around the Eaton Centre, have a mainly white population but many black visitors. Excluding those areas from analysis "would have a huge impact in the data, " Wortley says. Harvey also analyzed impaired driving data, an area where police have no choice about whether to bring someone in.

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Q The Star's work was criticized for "lack of transparency, " meaning key assumptions and procedures weren't obvious in the story, making it hard for outside researchers - like Harvey - to duplicate the Star's results. Is this a valid complaint?

A No. The Star's multi-part investigation into race and crime wasn't written as a textbook for social scientists. Rather it was aimed at the general public. Included was a detailed outline of how the findings were reached. In addition, the background and methodology behind the project were explained at length to the governing board of the Toronto Police Service, in a special meeting held at the Star. If social scientists, like Harvey, needed an even fuller explanation of the project's assumptions, procedures and definitions they needed only to ask the Star. But Harvey didn't ask.

Q The police department's database was designed for internal use, to keep track of arrests and other offences, not to perform an analysis of race and crime. Wouldn't it have been better to study a database specifically set up to track how police treat people of different races?

A Yes. A database precisely tracking policing, by race, in Toronto would be superior to that used by the Star. But such a database doesn't exist. Rather than ignore the question of how people are treated by police, the Star used the best available records to explore the issue. That's in keeping with journalistic and social science practice across North America.

"There's a long tradition of doing experiments and analyses using data that comes from other sources, collected for other reasons, " says U.S. law professor David Harris, an expert on racial profiling who works with the U.S. Congress and state legislators on the issue. In fact, U.S. media have analyzed police data, and reached similar conclusions. As a result, many U.S. jurisdictions are now required to collect race-based figures on traffic stops. Toronto police oppose collecting such numbers.

Q As part of its study of police statistics, the Star "cleaned up the data" before subjecting it to analysis. Is that unusual?

A No. A large database typically includes misspellings and overlapping references that should be standardized before analysis. For example, under "country of birth, " the police database listed "Toronto" for many accused. Several similar problems needed fixing.

Q To put arrests, and especially traffic tickets for blacks, in context, the Star cited census population numbers describing the size of the black community. Wouldn't it have been better if the newspaper had used a more precise measure - the number of black drivers, when considering ticketing rates, for example?

A Yes. It would have been better to look at the percentage of blacks ticketed and compare it with the number of black drivers in Toronto, as opposed to the size of the black community as a whole. But race isn't recorded on drivers' licences.

Since neither Statistics Canada nor the province collects information on the race of motorists, census data was used as an alternative. U.S. race and policing researchers are moving toward special surveys to determine the black driving population, but disagreement remains on how such surveys should be done.

"We're desperately trying to work out a way, " says John Lamberth, a U.S. consultant on racial profiling. "I think, right now, the survey is the way to go."

Q In attributing differing treatment by police to race, did the Star fail to consider the role of an arrested person's criminal record and other "confounding factors" that could explain differences in how someone was handled?

A No, the Star did not ignore confounding factors. Besides race, several factors were studied as a possible explanation for differing treatment by police, including criminal record, employment status, age, citizenship, country of birth and more. Even when those influences were taken into account, race consistently emerged as a clear factor in the treatment of people charged with a single count of drug possession.

Q The Star's most controversial findings are based on a few narrow aspects of the database - not the statistics as a whole. Is that a "scientifically unsound and an unfair selection, " as alleged on the police department's Web site?

A No. Certain aspects of the database were spotlighted by the Star because they offered special insight into the impact of race in policing. For example, a focus was put on people charged with a single count of drug possession because, in these cases, police officers have a great deal of discretion in dealing with an offender. Similarly, the Star examined tickets resulting from traffic stops where there was no outward reason to pull a motorist over.

"If you want to look at the possibility of discriminatory treatment, you look at those situations where there's room for police discretion, " says York University professor Michael Friendly, an expert in statistics.

Q An executive summary on the police Web site labels as "illogical or unreasonable" the Star's conclusion that justice is different for blacks and whites in Toronto. Is the newspaper's conclusion truly illogical?

A No. It's widely held in the black community - and supported by anecdotal evidence - that race matters in Canadian society, especially when dealing with police. More than 600 people have contacted the Ontario Human Rights Commission over the past 10 days to complain of mistreatment by authority figures, including police, on the basis of race, gender or sexual orientation.

A 1995 Ontario commission found "systemic racism" at work in the criminal justice system. And a crown prosecutor said in open court, in January, that racial profiling existed.

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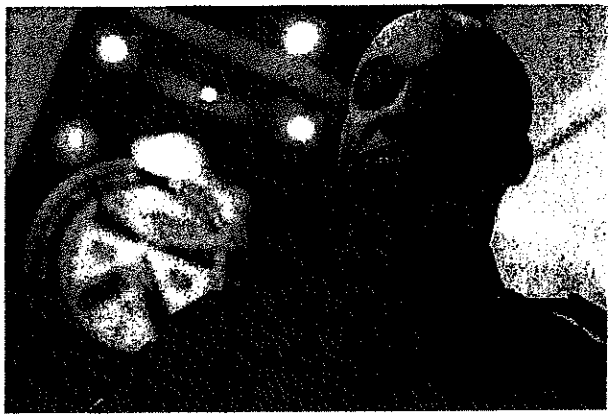
News / Crime / raceandcrime

Race Matters: Blacks documented by police at high rate

In a freedom of information request that spanned nearly seven years, the Star obtained six years worth of contact-card data from Toronto police.



Data obtained by the Toronto Star appears to tell a stark story: Toronto police question black people at a disproportionately high rate. The question is: "Why?" And that answer - depends on who you ask. Video by Randy Risling.

By: Jim Rankin STAFF REPORTER, Published on Sat Feb 06 2010

10 ... 9 ... 8 ...

Rohan Robinson begins the mental countdown. A police cruiser has pulled up beside his Acura, an officer has peeked in the driver's side window, and the cruiser has dropped back in behind his car...

7 ... 6 ... 5 ...

Usually, he sees the flashing lights in the rear-view mirror before he reaches zero. "It's so routine now that I know," says Robinson, 32, an elementary school teacher with the Toronto District School Board.

Robinson, who is black, estimates that since 2001, he has been stopped close to 30 times while driving in Toronto without being ticketed. On a few other occasions he was handed tickets, and he says he deserved them.

Before he was old enough to drive, beginning when he was 15, he would be stopped while on foot.

Toronto police question hundreds of thousands of people, both walking and driving, every year. In many cases, officers fill out a "208" card, police lingo for an index-card-sized document used as an investigative tool and, according to Chief Bill Blair, a way to "get to know" the neighbourhood.

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Robinson does not know how many have been filled out on him.

In a freedom of information request that spanned nearly seven years, the *Star* obtained six years' worth of contact-card data from Toronto police.

The *Star* analysis shows race, age and gender are big factors in who gets stopped. Looking at blacks and whites of all ages, blacks are three times more likely to be stopped.

Male blacks aged 15-24 are stopped and documented 2.5 times more than white males the same age.

In each of the city's 74 police patrol zones, the *Star* analysis shows that blacks were documented at significantly higher rates than their overall census population by zone, and that in many zones, the same holds true for "brown" people — mainly people of South Asian, Arab and West Asian backgrounds.

"It doesn't matter what type of neighbourhood you live in or what type of neighbourhood you're travelling through, if you are black you are much more likely to attract the attention of the police and therefore have a contact card filled out," says University of Toronto criminologist Scot Wortley, who reviewed the *Star* analysis.

In one of two interviews for this story, Blair said he understands that people may think they are being unfairly stopped. He said police are targeting neighbourhoods where the highest level of "victimization" occurs. He said these are often "racialized" neighbourhoods.

The collateral damage is law-abiding civilians who feel they are being treated unfairly because they are black. Although blacks make up 8.4 per cent of Toronto's population, they account for three times as many contact cards.

Robinson, who wears his hair in short dreads, is troubled by this. And he's far from alone. Max Rose, 16, who is regularly questioned by police in the Jane and Finch-area building he lives in, says he feels embarrassed when neighbour gather to watch.

Kasim St. Remy, 14, was recently stopped and questioned by police. He hadn't done anything wrong. This bothers his mother, Clemee Joseph, yet she sees the stopping of young men of colour as necessary, if imperfect.

"It is hard for me when the police stop him to question him and have him on their radar but, as you know, in the past it has been all black young men killing each other," says Joseph, 39. "I know that my son is a good kid, but sometimes his friends may not be."

For Joseph, the other side of this issue is preserved under glass, in the framed pictures of her other son that crowd a living room table in her west end apartment. Last May, Jarvis St. Remy, 18, was killed in what she believes was a case of mistaken identity. St. Remy had no history with police, who have yet to make an arrest.

"I don't like the stereotyping of this ... they get the good kids and the bad kids all in one," she says. "But that is what is happening with the black kids, so that's who they have to stop."

Differences between black and white carding rates are highest in more affluent, mostly white areas of the city, such as North Toronto and the Kingsway, the *Star* found. Criminologist Wortley calls this the "out-of-place" phenomenon.

It's a natural thing to expect from officers on the lookout of for things unusual or different, says Wortley, who oversaw a police stop data-collection pilot project by Kingston police.

Neither Blair nor Police Services Board chair Alok Mukherjee had a ready explanation for the city-wide pattern of disparity. Mukherjee said he would like to know more about whom police choose to document, and the reasons why. Blair suggests that every patrol zone has its "main street" where police are more active, and the demographics of people in those areas may account for this city-wide pattern.

The *Star*'s analysis of contact-card data found that most people police documented had not been charged criminally in the previous six years. Looking at 2008, four out of five who were carded did not show up in a criminal database also obtained by the *Star*.

There is a much smaller number of repeat offenders with serious criminal histories who are being checked up on with greater frequency.

Chief Blair estimates Toronto has 1,400 hard-core gang members and another, larger group of people suffering from mental health and addiction problems. Both end up receiving a disproportionate amount of intentional police attention. Two of Toronto's most documented people in 2008 are female street prostitutes working in the downtown core. Another in the top 10 is a middle-aged panhandler from Newfoundland.

The cards pay off when police investigating serious crimes find links to associates, potential witnesses and suspects. The cards have also been used to obtain search warrants and are sometimes entered as evidence in criminal trials.

The *Star* found cases where convicted murderers had many 208 cards in their past, and some where they had none.

Colves "Jacko" Meggoe was a 50-year-old community activist who was gunned down in the foyer of his apartment building in 2006. At trial, one of the accused, 39-year-old Mark Cain, produced an alibi. Police used a 208 card to prove the man providing the alibi was not with Cain. Cain and his nephew were both recently convicted of the murder. Together, the two men had 33 208s. The man who offered the alibi had nine.

"That 208 tied everything together," Homicide Det. John Biggerstaff says.

Mike McCormack, newly elected police union president, was working as a cop up until four months ago in 51 Division. He had spent 10 years in major crimes and gang intelligence. He calls the cards "invaluable.

"You're recording data, setting up associations, knowing who's involved (in gang activity). It puts people in certain locations."

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McCormack recalled a recent case in which two men were caught on video during a home invasion. Police knew the identity of one man but not the other. So they pulled the 208 card of the first man and looked up his associates. One of them had a criminal history, and thus there was a mugshot on file. "Lo and behold, it was the same guy as on the video."

Senior officers with Toronto Police Service also provided an example of the cards working. They closed a sexual assault case at a York University residence in 2007 when, with one suspect in hand, they searched his 208 cards and found the accomplice. Both have been convicted.

The carding of citizens in non-criminal encounters is something most police services do. It has been beefed up in Toronto under Blair's tenure as chief as part of the Toronto Anti-Violence Intervention Strategy (TAVIS), introduced in 2006 in response to a spate of violence that led to 2005 becoming known as the Year of the Gun. The strategy involves a two-pronged approach: old-style community policing combined with a continued, heavy presence wherever and whenever required.

These officers are culled from units across the city and are often unfamiliar with the areas they flood.

Ask people in affected areas and they will say there has been a notable drop in drug dealing and violent crime since the advent of TAVIS. Police statistics bear that out. While some of the criminals have ended up locked away, others have dispersed.

"Once (the police) presence is there, (the dealers) go somewhere else, it just moves on to another space," says Winston Larose, a community activist in the Jane-Finch area and a psychiatric nurse. "But some people in the area are saying there is some relief. All we know is that it is quiet, but the quiet is at the price of people's freedom, and sense of freedom."

Blair said nine out of 10 youths stopped and documented on a street corner may be perfectly good kids, and the encounter might leave them "pissed at us."

"Those relationships are the toughest things," says Blair. He expects his officers to be sensitive to how the youth feel and explain themselves. Even then, he acknowledges, the encounters may not go well.

While there are myriad social and economic factors and other explanations for this unbalance, Chief Blair says racial bias can be part of the mix. And it comes in different forms, from intentional racial profiling to automatic, or implicit, bias that can affect decisions made by good people who do not think of themselves as biased.

It is to be expected, says Blair. "We recruit from the human race."

A request for contact data and another for police arrest, charge and ticket data were made in 2003, as a follow-up to the *Star*'s groundbreaking 2002 series on race, policing and crime in Toronto, which used police arrest and charge data to show that black people, in certain circumstances, were treated more harshly than whites. The data also showed that blacks then were 3.3 times more likely to be charged with violent crimes.

The series led to an Ontario Human Rights Commission inquiry into the impacts of racial profiling on society in general.

A repeat of the 2002 analysis looking at arrest and charge data from 2003 to 2008 shows those results have changed little.

Internally much has changed. Immediately upon taking over as chief in 2005, Blair acknowledged that racial bias is a problem in policing, as it is elsewhere in society, and took steps to deal with it. Since then, Toronto police have notably improved the number of minority recruits and have promoted members of visible minorities into higher ranks. They've also embarked on a unique partnership with the Ontario Human Rights Commission to improve human resources practices, and how police serve the public.

"Police services, not just in Ontario, but across the country, and to some extent, internationally, are watching with great attention the work that we are doing," says Barbara Hall, Ontario's Human Rights Chief Commissioner. "There's no question that having chief Blair stand up, you know, to his peers, and acknowledge racial profiling exists within the Toronto Police Service ... gives permission in a sense to other services to acknowledge it."

Meanwhile, stopping and carding individuals is considered good police work. And although Chief Blair says there is no quota or promotion incentive, card counts are used to measure officers' performance. Some who are carded may never know that they have become part of the data collection.

Chief Blair points to slight decreases in the number of cards filled out in the past two years. "And it's because we now have a much better understanding of (who) those who represent the greatest risk are.

"It doesn't mean that we're having less contacts. In fact, we're having more. But now that we know who the bad guys are, and there are bad guys out there, they're getting much more focused attention from us."

The *Star* analysis shows police begin documenting youth in certain "at-risk" neighbourhoods in serious numbers when they are on the cusp of becoming teenagers. The carding peaks in the late teens and gradually diminishes as people reach their 30s and 40s.

Young people interviewed by the *Star* say they don't feel they have any choice but to stop and answer police questions in these encounters. They are often asked to prove who they are. To walk away or refuse to produce ID, which in many cases is their constitutional right, might result is arousing further suspicion and hassle. In some cases, basketball games come to a halt as police do their work. Complying, which sometimes involves the emptying of pockets, means the play resumes sooner.

"It's hard," says Max Rose, 16, who lives in an apartment on Tobermory Dr. "I spent a weekend in Vaughan, and I can go outside and play basketball all day and all night. But in Jane and Finch, the police will come on their bicycles in the summertime and then, like, they stop your game to ask

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you your name, 'What are you guys doing?' Dumb stuff like that. They're just like a pestilence in people's life."

While a cop can walk up to anyone and ask questions, a citizen does not have to answer those questions, said Osgoode Hall law professor Alan Young. If in a vehicle, the driver may be compelled to show identification or give a statement. An officer can do a "protective pat-down" and search the person if he feels anything resembling a weapon.

David Tanovich, a University of Windsor law professor and author of *The Colour of Justice: Policing Race in Canada*, has been a critic of the documenting of people in mostly non-criminal encounters, calling it a "no walk" list for young men in disadvantaged neighbourhoods, where more people tend to be of colour. He questions whether the practice of detaining people and requiring identification in order to document and track them is even legal.

"And if it is that kids can't walk to school without having to stop, show their ID and have the officers fill out contact cards, that's heightened surveillance, which is exactly what the essence of racial profiling is all about."

In a letter replying to the *Star*, Canadian Civil Liberties Association general counsel Nathalie Des Rosiers also took issue with the questioning and carding practice.

"Regardless of intentions, police questioning can be intimidating and coercive," writes Des Rosiers. "When perceived as excessive of discriminatory, it can create distrust in law enforcement, undermine public faith in police, and, ultimately, weaken efforts to root out and punish crime."

Elementary school teacher Robinson wanted to be a police officer when he was younger. In 2003, he gave anonymous testimony in the human rights inquiry into racial profiling regarding 10 encounters he had had with Toronto police between 2000 and 2002, in which he believed his skin colour was a factor. Out of the 10 incidents, nine involved traffic stops and most resulted in no ticket. He was in his mid 20s then.

The *Star* tracked Robinson down at Oakridge Junior Public School to see what's changed for him. He's just bought a house, is working on a master's thesis and is coaching both the boys' and girls' school basketball teams. He also recently wrote a paper on student perspectives on having police officers in their schools.

The number of times he's been pulled over by police since he testified? He smiles and says he's lost count. About 20, he guesses. He does not have a criminal record.

Robinson has taken to hanging his TDSB ID card from his car's rear-view mirror. He says police change their tone when they see it.

"Policing is important," he says. "I totally support the police, but I support them when they go at it from an objective perspective, where, no matter who you are, if you did the crime, you get the consequences. If I am speeding, I'm supposed to get the same consequence as someone else who is speeding, no matter what. If I'm driving and I get pulled over for no reason, it should happen to everybody, not just me, and that's how I see it."

It's a Friday morning in December, and in his seventh floor office at Toronto police headquarters on College St., Chief Blair learns that one of four people shot overnight on Falstaff Ave. has become the city's 55th homicide victim of 2009. Not good, but not bad, considering totals from previous years, including 2005, when 79 people were killed, many by guns.

Perhaps cards will help detectives piece this one together.

Blair points to a police map showing violent crime hotspots and describes a pattern that creeps up again and again in studies of Toronto neighbourhoods facing challenges. It's an unlucky horseshoe shape, more of a "Nike swoosh," as Blair puts it. It's where there is poverty and lack of opportunity. And more of the people in these situations are members of visible minorities.

"Everybody knows exactly what we're pointing at," says Blair, "and it's where the violence takes place, the shootings, and it's tragically consistent."

These areas, the *Star* found, are also where the gap between the number of contact cards filled out and arrests made is greatest.

Deputy Chief Keith Forde, the city's first black deputy, would like to see the disparity in who is carded shrink away, but he believes black people are carded more often because black people are disproportionately being charged with violent crimes and disproportionately the victims of violent crimes. Seeking out suspects based on witness descriptions in areas where more black people live, he explains, results in more blacks being stopped.

"These are things that you cannot dispute," Forde said in an interview. "So, yes, you can see the contact cards being out of proportion. Are we doing something to try and alleviate that? Sure we are. Sure we are."

The Star's Investigative Team all contributed to this story: Jim Rankin, David Bruser, Moira Welsh, Brett Popplewell, Michele Henry, Diana Zlomislic and Dale Brazao.

News / Crime / raceandcrime

Story behind the numbers

In a seven-year freedom of information battle, the Toronto Star obtains Toronto police data that documents arrests and charges and non-criminal contacts with the public. A data download is available.

By: Jim Rankin Staff Reporter, Published on Sat Feb 06 2010

The data that serves as the foundation for the *Race Matters* series was obtained in a freedom of information request that spanned nearly seven years.

Reporter Jim Rankin asked Toronto police for updated arrest data in May, 2003, as a follow-up to the *Toronto Star*'s 2002 series into race, policing and crime in Toronto. Rankin also asked for a second data set that details who Toronto police choose to stop and document in encounters that usually result in no arrest or charges.

Police denied the requests, setting in motion a lengthy battle that involved multiple appeals and counter appeals, a request for a stay by police, a trip to divisional court and a final visit to the Ontario Court of Appeal last January, which resulted in a clarification of what institutions must do to respond to public requests for electronic data. It also affirmed a much earlier decision (PDF) by Ontario's Information and Privacy Commissioner that required police to issue decision letters.

Both the Commissioner and the Canadian Civil Liberties Association made arguments in that final, successful appeal by the *Star*.

In late 2009, Toronto police charged the *Star* $12,000 in programming fees – an amount the *Star* is appealing – and handed over the data. Names of citizens and officers, and other personal information, removed. *Star* database specialist Andrew Bailey and Rankin spent over a month vetting and analyzing the data. The analysis includes a replication of the analysis behind the 2002 series and a look at the never-before-released contacts data.

The *Star* presented its preliminary findings to Toronto Police Chief Bill Blair and Toronto Police Services Board Chair Alok Mukherjee in early December. Police reviewed the analysis and "nobody's disputing it," said Blair. This marked the beginning of a discussion between the *Star*, police and other stakeholders about the reasons for the patterns that have been identified in the *Star* analysis.

Since 1989, Toronto police have been forbidden from doing what the *Star* has done with the service's own data: produce race-based crime statistics. It was thought at the time – and still by some, including the service itself – that the information could be misused and further harm already stigmatized communities.

An important caveat: Skin colour is identified in the police data as being either "White," "Black," "Brown," or "Other." This is based on officer assessments. Some individuals documented multiple

times may have several skin colours listed. The *Star* has used 2006 Census data to compare rates we are seeing in the data to baseline populations in Toronto proper. In the *Star* analysis, "Brown" classified as South Asian, West Asian and Arab. "Other" is any visible minority other than Black or South Asian, West Asian or Arab. The *Star* made these classifications based on an analysis of birth country and skin colour in the police data. For a small percentage of incidents, there was no skin colour noted. These entries were excluded from the *Star* analysis.

Making benchmark comparisons with the general population can be problematic, but it is the only available benchmark.

The TPS, as the *Star* requested, has released the data in a form that, although not perfect, allows for an analysis of people who are arrested and/or documented multiple times.

The data comes from three source databases, and details incidents and stops from the beginning of 2003 to the end of 2008. All three of these data sets can be accessed from police computers and in-cruiser laptops.

Criminal Information Processing System (CIPS)

Details 515,000 incidents, involving 297,216 individuals, in which there was either an arrest and criminal charges laid, or certain non-criminal traffic offences were laid. The data includes age, gender, birth place, immigration status, skin colour, charge and offence information, where the arrest occurred, and, if people were not held for bail, how they were released from police custody. The *Star* coded offences into general crime and offence categories.

Master Names Index (MANIX)

Records data gathered from police contact cards, filled out by officers in mostly non-criminal encounters with the public. Includes details on appearance, age, gender, location, mode of transportation (foot, vehicle, bicycle) and skin colour. It also documents associates. Between 2003 and 2007, police filled out 1.5 million contact cards, detailing encounters with 1.1 million individuals. Police stopped using this database in 2007, but the data is kept indefinitely and is accessible from any police computer.

Field Information Reports (FIR)

Replaced MANIX as the repository for contact card data, and houses the same contact card details as MANIX. It also gives descriptions for the nature of police contact, such as general investigation, loitering and traffic stop. This data set captures details from 315,000 contact cards filled out on 242,000 individuals from late 2007 to end of 2008.

A downloadable copy of the FIR data set is available - click here for instructions.

Academics and educators interested in obtaining the entire data set can contact Jim Rankin at jrankin@thestar.ca.

News / GTA

Police Service Board decision on 'carding' stuns activists

Police stops have also been under scrutiny in London and N.Y. But the type of oversight that may limit it can only be found here.

By: Jim Rankin Feature reporter, Patty Winsa News reporter, Published on Sat Apr 14 2012

Monitor the controversial police practice of stopping citizens on the street, particularly minority youth, and "carding" them. Make officers give a copy of the gathered information to those they stop. Open police data for review by the city's auditor general.

That's what the Toronto Police Services Board is ordering, stunning even the activists who fought for more oversight of carding, which sees hundreds of thousands of people stopped, questioned and documented each year.

The Toronto board's decision, made earlier this month, is "pretty amazing," says former mayor John Sewell, a member of the Toronto Police Accountability Coalition, a group of concerned citizens who led the drumbeat for change.

Toronto police defend the practice as good police work in high crime areas. But a *Star* investigation found that police stop and document minorities at much higher rates across the city. And only a small percentage of the people in their massive electronic database have been arrested or charged in Toronto in the past decade.

The practice is also a front-page debate in New York and London.

Police stops have been under scrutiny in all three cities. But the type of oversight that may limit the practice can only be found here, thanks to the ruling.

The motions that passed included a request that police chief Bill Blair report carding statistics every three months, as well as monitor and address discriminatory practices.

In addition, officers will be required to give copies of the document card — stating the reason for the stop — to each individual.

The board also unanimously approved chair Alok Mukherjee's call for the city's auditor general to conduct an independent review of the race-based statistics kept by police, who record skin colour — black, brown, white or "other" — each time they stop and document a resident. The review would create a benchmark to judge the effectiveness of carding.

The service, and the police board that oversees it, haven't always been as receptive to the suggestion that some police practices may target minorities.

In 2003, Toronto Police Association launched an unsuccessful $2.7-billion class-action libel suit against the *Star* after it published data that suggested a pattern of racial profiling.

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The data showed blacks were more likely than whites to be detained and held for a bail hearing on a charge of simple drug possession. And that more were ticketed for offences that would only come to light following a traffic stop. Civil libertarians and criminologists said it was a pattern of racial profiling, whether conscious or not.

In the *Star* 's latest analysis , blacks were more likely than whites to be stopped and documented in each of the city's 72 patrol zones. The ratios for black youth were even higher.

So, as Sewell sat in the darkened police board room earlier this month along with a chorus of groups — the Canadian Civil Liberties Association, the Urban Alliance on Race Relations and the Black Action Defence Committee — all calling for an investigation into carding, he still couldn't believe much was going to happen.

The board vice-chair, Councillor Michael Thompson, said afterward that many people in the room felt the same way, telling him later, "Oh my God. You guys actually did something. We didn't think anything was going to happen."

But the councillor said it was time to draw a line in the sand. "I read the (*Star*) series years ago. And I read the series again," he said, referring to "Known to police" , which ran in March. "I know 10 years ago how controversial it was."

"At the end of the day the police board is there to act on behalf of the citizens. And to implement measures to help make sure policing is safe for everyone," said Thompson. Simply "referring the matter back to the auditor general with a report wasn't sufficient."

Many of the groups at the board meeting didn't need the *Star* series to alert them to a frustrating imbalance between minority youth and police. They included front-line youth workers who had heard the stories before.

"Sadly, the results described in the *Toronto Star* series come as no surprise," said Noa Mendelsohn Aviv of the Canadian Civil Liberties Association, which is facilitating a project on youth rights and policing.

Sewell's recommendations were also supported by the provincial advocate Irwin Elman, who wrote in an email that young people have "highlighted the need for better relationships with community members, including Toronto police" since he took office in 2008.

Chief Blair has never defended racial profiling, calling it "abhorrent." But he has supported carding, stressing that police target violent-crime areas of the city and that it has worked to reduce crime.

New York police commissioner Raymond W. Kelly has also called his force's "stop and frisk" practice an "important policing tool intended to reduce the violence that has victimized blacks and Hispanics," according to a *New York Times* article in March. Statistics show 96 per cent of the city's shooting victims and 90 per cent of murder victims in 2011 were minorities.

Police continue to "stop and search" there in record numbers, despite legislative changes made two years ago, when anger against the practice boiled over.

"People were pretty outraged that hundreds of thousands of innocent people were all of sudden in a police department database," says Darius Charney, a lawyer with the Center for Constitutional Rights, which has monitored the police data for nine years.

Police are now prohibited from maintaining an electronic file of names unless the stop ends in an arrest. But Charney says police interpreted the legislation as a limit only to maintaining electronic files and police still fill out the forms and keep paper copies. "Somewhere in the police department are a huge stack of handwritten forms," he says.

Despite the legislation, statistics show police stopped nearly 700,000 people in 2011, 85 per cent of whom were black or Hispanic. Only 1 per cent of the stops led to recovery of a weapon and only one in 10 to an arrest or summons.

Charney's non-profit organization is part of a class-action lawsuit against the police department, alleging the stop and frisk practice violates the U.S. Constitution's fourth amendment, which prohibits search and seizure.

New York senators and city councillors, who say they've been stereotyped by police, are also trying to bring in legislation that would limit the practice.

In England, police "stop and search" powers used to uncover weapons or crime are also "hugely disproportionate. And yet also hugely ineffective," says Rebekah Delsol, a member of the Open Society Justice Initiative, which studies ethnic profiling worldwide.

A leaked Scotland Yard memo made news when it revealed that police thought a federal "stop and search" power that disproportionately targets blacks could be toppled by a court challenge.

Section 60, as it's called, allows police to intensively search areas in response to knife crimes.

But "nationally, black people are more than 30 times likely to be stopped under Section 60 powers and Asian people are seven times more likely to be stopped," says Delsol. "Only 2 per cent of those stops actually lead to an arrest. And it's something like 0.5 of those for possession of a weapon, which is the ostensible reason for the power in the first place."

Activists are calling for the kind of oversight that was introduced in Toronto.

"There needs to be much tighter internal management that actually takes action on officer practice and does something about the culture of institutional racism," says Delsol, whose organization is part of a court challenge to the Section 60 powers.

"And on the other side, I think there's a lot of work to be done on using the statistics in a very clever way and working with communities so that they can really monitor the police and hold them to account."

To view the entire series and past related series go to the thestar.com/knowntopolice

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Special report: Human rights and racial profiling

Decision shows racial profiling as a form of everyday racism, confirms test for discrimination

The OHRC intervened in *Peel Law Association v. Pieters*, where the Court of Appeal overruled a Divisional Court ruling, and held that the Divisional Court applied an overly strict test for discrimination. In its June 2013 decision, the Court of Appeal found that the HRTO was reasonable in concluding that the claimants were discriminated against because of race and colour.

The case involved the treatment of two Black lawyers by a librarian in the Peel Law Association lounge in May 2008. Only "lawyers, articling students and students of law" were permitted in the lounge. The librarian approached them in an aggressive and challenging manner, and asked them to produce identification. No one else in the lounge was questioned and asked for identification. The HRTO found that the librarian falsely claimed that the reason she singled them out was because she knew everyone else in the lounge. There were two other people in the lounge who had never been there before and whom she did not know. One was not a lawyer.

The Court of Appeal confirmed the traditional three-part test for a *prima facie* case, as argued by the OHRC. It rejected the test applied by the Divisional Court. The Court of Appeal found that to establish a *prima facie* case, a claimant must show:

- That he or she is a member of a group protected by the *Human Rights Code*
- That he or she was subject to adverse treatment, and
- That the protected characteristic was a factor in the adverse treatment.

The OHRC argued that racial stereotyping will usually be the result of subtle, unconscious beliefs, biases and prejudices, and is not limited to the law enforcement context. The Court of Appeal accepted this as a "sociological fact."

The Court also reiterated the principle that there does not need to be direct evidence of discrimination – it will more often be proven by circumstantial evidence and inference.

The Court's decision shows that racial profiling is a form of everyday racism. Racial profiling is about more than just traffic stops by the police. It is a phenomenon that is widespread in our society, and has many faces.

Taking stock of carding, community contacts

There has been much concern that the Toronto Police Service (TPS) practice of "carding" has a major impact on the African Canadian community, particularly young Black men, and could contravene the *Human Rights Code*. For the statistical story, see the Toronto Star's in-depth series on carding, by Jim Rankin and associates, available online at www.thestar.ca.

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In 2013-14, the OHRC took steps, in concert with community groups, to eliminate practices that could lead to human rights violations. Here are some highlights...

Community meetings: We attended community meetings around Toronto with the Law Union of Ontario, the Human Rights Legal Support Centre, Action for Neighbourhood Change Mount Dennis, and the York Youth Coalition. We provided public education on rights under the *Code*, the human rights system, carding and racial profiling. We continue to encourage affected community members to come forward and share their stories.

March 2013: We supported the decision of the Toronto Police Services Board (TPSB) to collect and analyze data on contact cards and the pattern of contact between the police and members of the community in general, including young people from certain racialized communities.

June 2013: We raised human rights concerns about carding at the TPSB, including:

- the gross over-representation of African Canadians in the Toronto Police Service's contact card database
- how carding interactions are commonly seen as detentions or restraints of liberty
- how such stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression.

We called for existing practices to be stopped until they could be completely and transparently assessed against the *Code* and the *Charter.*

November 2013: We again called on the TPS to stop carding until policies and procedures were fully developed and assessed against the *Code* and the *Charter*. We recognized several positive steps in the TPS's Police and Community Engagement Review (the PACER Report), including:

- creating a standing community advisory committee to assess and address racial profiling
- doing community surveys to evaluate and address issues relating to public trust and racial profiling
- monitoring officer performance trends and indicators that may relate to racial bias
- reporting publicly on "Community Safety Note" related procedures and practices.

However, we still had major concerns about the TPS stopping individuals, asking for and recording their personal information and circumstances without clear and lawful criteria.

December 2013: We joined the PACER standing community advisory committee as regular members, and began working with the community and the TPS to implement PACER Report recommendations.

January 2014: We wrote to the TPSB about the independent legal opinion on carding it asked criminal lawyer Frank Addario to prepare. We called for Mr. Addario to assess the practice against the *Charter* and the *Human Rights Code*, and to look at concerns that in most cases, TPS officers cited "general investigation" as their reason for asking for, recording and storing personal information. These kinds of stops may lead to unreasonable questioning, requests for identification, intimidation, searches and aggression. Also, people who are stopped may feel they are not free to leave, and may not be told that they are free to leave.

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We also asked that Mr. Addario consider the gross over-representation of African Canadians being issued contact cards in all Toronto neighbourhoods, including the patrol zones in which they live, and under the category of "general investigation."

And once again, we called for carding to be stopped until clear and lawful criteria were developed and assessed against the *Human Rights Code* and the *Charter*.

April 2014: We made a deputation to the TPSB on its new Draft Policy on Community Contacts, citing it as an important step in its efforts to monitor and oversee reforms to the current approach to Community Contacts (formerly known as carding). We acknowledged the value of surveys to gauge public satisfaction regarding street checks, and collecting data in a separate database to monitor for racial bias in street checks.

The policy addressed several important issues, but our human rights concerns remained. We again called for the practice of arbitrarily stopping individuals and recording and retaining their personal information and circumstances to be stopped. We saw no indication in the policy about how officer discretion would be constrained to avoid racial profiling, and called on the TPSB to clearly define terms such as "ensuring public safety," "meet and greets," "community inquiries" and contacts that are prohibited.

We also called for clear penalties for inappropriate contacts. Real accountability requires penalties up to and including dismissal when officer behaviour is consistent with racial profiling.

The Board listened to concerns raised by the OHRC and other advocacy and community groups and came back with a revised Draft Policy for consideration on April 24. They set out a definition of "public safety" and disciplinary measures if the policy is breached.

However, a new clause seemed to bring us right back to where we started. The clause said that "collecting intelligence relating directly to an identifiable, systemic criminal problem and pursuant to a Service or Division-approved initiative" was a valid public safety purpose justifying initiating or recording contacts. It suggested that just being in a high-crime neighbourhood was a good enough reason for someone to be stopped and their personal information recorded and kept on file.

The OHRC and community and advocacy groups, including the Law Union of Ontario, the Black Action Defense Committee and Justice for Children and Youth, were united in calling for the clause to be deleted. We told the TPSB that the clause would continue to permit officers to arbitrarily stop people and record and retain their personal information – with the same disproportionate impact on African Canadians.

The TPSB listened. They deleted the clause and they added a provision requiring receipts.

The result is a policy that, if effectively implemented, should help limit officer discretion, reduce racial profiling and increase community trust. Good implementation, including data collection, clear procedures with close monitoring and effective training, is key to making this work.

We are ready to assist the Board and look forward to continued work with the Service through the PACER Advisory Committee to implement the policy. We will also continue to work with affected communities to help eliminate racial profiling from the streets of Toronto.

This year in history

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Nassiah v. Peel (Regional Municipality) Services Board

The Nassiah case was one of the first HRTO cases dealing with racial profiling. In February 2003, Peel Police were called to investigate a possible shoplifting allegation at a large department store in Mississauga. The HRTO found that Ms. Nassiah, a Black woman, was subjected to a more intensive, suspicious and prolonged investigation because of her race. In other words, she had been subjected to racial profiling.

She had been wrongly apprehended by store security on suspicion of stealing a low-priced item despite her repeated and impassioned denials, and a Peel Police officer conducted a discriminatory investigation that included:

- stereotypically assuming that a Black suspect might not speak English
- assuming that the White security guard was telling the truth and that the Black suspect was not, without properly looking at all the evidence, including a videotape of the alleged theft, which exonerated her
- adopting an "assumption of guilt" approach to the investigation by immediately demanding that Ms. Nassiah produce the missing item
- unnecessarily arranging for a second body search after the first one had shown she did not have the allegedly stolen item
- continuing with the investigation, rather than releasing Ms. Nassiah, even after the second body search confirmed that she did not have the stolen item
- spending up to one hour pursuing an allegation of theft, in the face of fragile evidence, for an item worth less than $10.

The HRTO also found that the police officer subjected Ms. Nassiah to verbal abuse, and threatened to take her to jail if she didn't produce the missing item. The police and store security ultimately released Ms. Nassiah after they concluded that they had made an error. The HRTO stated that racial profiling is a form of racial discrimination, and that it is against the Human Rights Code for police to treat persons differently in any aspect of the police process because of their race, even if race is only one factor in the different treatment. The HRTO also noted the mounting evidence that this form of racial discrimination is not the result of isolated acts of individual "bad apples" but part of a systemic bias in many police forces.

Saying no to racial profiling: Phipps v. Toronto Police Services Board

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In a decision in a complaint by Ron Phipps, who is Black, the HRTO ruled he had been subjected to racial profiling in 2005 by a Toronto Police officer. The officer stopped Phipps when he was delivering mail in an affluent Toronto neighbourhood, checked with a homeowner Phipps spoke to, trailed him and checked his identity with a White letter carrier. The OHRC intervened in this case.

In a 2010 decision, the HRTO said that although there was no overt racism, it did find that racial profiling had occurred. It said this incident served as an important reminder that racial profiling exists and is not acceptable in policing or security. It also confirmed that racial profiling can be a systemic act that people are not even aware they may be doing.

The OHRC's work on racism and racial profiling has been a driving force in its activities with police and corrections services across Ontario.

News / GTA / Known to Police

As criticism piles up, so do the police cards

Blacks in Toronto continue to be disproportionately stopped and questioned in a practice the police board chair calls "unacceptable."

By: Jim Rankin Feature reporter, Patty Winsa News reporter, Andrew Bailey and Hidy Ng Data Analysts, Data Analysts, Published on Fri Sep 27 2013

Despite years of growing criticism, Toronto police continue to disproportionately stop, question and document blacks — and to a lesser extent, people with "brown" skin — adding their personal details into a controversial database.

Proportionally, a new Star analysis of Toronto police data from 2008 to 2012 shows blacks here were stopped and documented to a higher degree than blacks who were stopped and frisked by New York City police under a policy there that has led to outrage, lawsuits and settlements.

Looking solely at young black male Toronto residents, aged 15 to 24, the Star found the number who were "carded" at least once between 2008 and 2012 — in the police patrol zone where they live — actually exceeds by a small margin the number of young black males, aged 15 to 24, who live in Toronto.

"Devastating" and "unacceptable" was how Alok Mukherjee, chair of the Toronto Police Services Board, described the lack of change in the Toronto contact card data and the comparison to the New York numbers.

"We've been saying ... we are different," said Mukherjee, who was presented with a summary of the Star findings. "We are world leaders. We get awards and recognition for all that we have done for diversity and human rights. And then you see that.

"There has been a focus on dealing with gun violence but it still raises the question about the justification of the legitimacy of potentially carding every single young black in the city," said Mukherjee. He is expected to deliver a blunt report at the next police board meeting.

Toronto police have been busy trying to get out in front of the growing criticism over contact cards — forms filled out by officers in encounters that are typically non-criminal — and are set to reveal an overhaul of the way they police the city. Police are poised to share major proposed changes to the way officers conduct these stops and how data is kept.

Between 2008 and 2012, police filled out 1.8 million contact cards, involving more than a million individuals, in stops that typically result in no arrest or charge. The data end up in a massive police database that currently has no purging requirements.

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Officers search the database routinely following crimes and during stops. Police have cited cases where contact cards helped close homicide cases, and investigators value a database that makes connections among people, locations and times.

Police Chief Bill Blair has acknowledged that encounters that involve stopping, questioning and documenting people who might simply be going about their business do not always go well but, done properly, he considers them good policing.

He has also readily said racial bias is a reality in society, and policing, and may account for some of the differences.

In a police conference call interview this week with the Star, which obtained the data in a freedom-of-information request, Blair was not available. But senior brass, including deputy chiefs Peter Sloly and Mark Saunders, defended carding as a valuable tool.

But they also strongly signalled that change is underway.

"We're doing this 370,000 times (a year) on average," said Saunders. "And out of the 370,000 times I'm going to suggest that we do it well. And the focus and direction, hopefully, is how do we do it better."

A Star investigation delves into the widespread practice of "contact carding" - and its impact.

Police are expected to unveil 31 recommendations from an internal review of all operations, including carding, as early as Oct. 7, the police board's next scheduled meeting.

Whatever police propose, Mukherjee — clearly frustrated by the lack of meaningful street-level changes since 2005, when he became chair and Blair became chief — said the board must hold police accountable.

"The chief may provide his explanation of this data but the numbers are what they are," he said. "The board has given a lot of latitude, I mean eight years of latitude, we do policy, we do a human rights charter, we do training. All those pieces are in place.

"So what's left? People holding people accountable to the expectations of bias-free, non-discriminatory policing with respect for human rights."

Similar frustrations were expressed to varying degree by other stakeholders the Star shared its analysis with, including Barbara Hall, chief commissioner of the Ontario Human Rights Commission, the Canadian Civil Liberties Association, as well as academics, lawyers, youth, community workers and activists who have been attending police board meetings on the issue.

"The comparison between Toronto and New York is very graphic," said Hall, a former Toronto mayor, and she echoed the concerns of Mukherjee.

"It says there's something serious here that we need answers."

Critics say the stopping and questioning of citizens, also known as "street checks," has eroded trust of police in communities that are dealing with violence and may actually make some neighbourhoods less safe.

Knia Singh and Chris Williams filed requests with Toronto police to see their contact cards.

The new Star analysis shows:

- In each of the city's 70-plus patrol zones, blacks — and to a lesser extent people with "brown" skin — remained more likely than white people to be subjected to police stops that result in no arrest or charges being laid. The likelihood increases for blacks in areas of the city that are predominantly white.

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- The proportion of cards for black people in Toronto is three times greater than blacks' share of Toronto's population. In New York, the proportion of blacks stopped and frisked is 2.3 times greater than blacks' share of that city's population.

- Carding is up, despite criticisms and questions of the legality of some stops. From 2008 to 2012, the number of street checks conducted rose 23 per cent. In 2012, police filled out 397,713 contact cards, involving 302,719 individuals. Since 2005, the year Toronto experienced the "year of the gun," the number of cards has increased by 62 per cent.

- More than half of the people documented between 2008 and 2012 lived in or near the patrol zone where they were stopped. That number increases in at-risk neighbourhoods, where incomes are lower and people less mobile.

- With that in mind, from 2008 to 2012, the number of young black males, aged 15 to 24, who were documented at least once in the police patrol zone where they live exceeded the young black male population for all of Toronto.

It's important to note that for each group, each year, a number of young people enter this demographic, as 14-year-olds become 15, and, if carded, they contribute to a higher count, and this would make it entirely possible that the number exceeds the snapshot census population estimates. But as police continue to stop, question and document hundreds of thousands of people annually, it becomes increasingly possible that all black, and to a lesser extent brown, youth in certain parts of the city could become part of the contact card database.

- Blacks were charged with serious violent offences at a rate higher than their baseline population. This has remained the case for more than a decade.

Police this week said carding has dropped 25 per cent from January to June of this year, a sign, perhaps, that officers are thinking harder about when to document. There has also been another drop over the summer, since police began issuing "receipts" to those they card, Sloly said.

It's not clear if the patterns of *who* police stop has changed as well.

Police say they are policing communities where violence occurs and act on intelligence in terms of who they target, and that this has contributed to declines in crime.

"The officers aren't going in with the purpose of identifying everything that's moving," said deputy chief Saunders, responding to the portion of the Star analysis that suggests police may have, over a number of years, documented every young man of colour in certain neighbourhoods.

"They're specific in who they're going to speaking to," said Saunders. "It's intelligence-led. So you're not ever going to have a unit commander say we need you to identify every single type of person. It is going to be based upon what criminal activities are happening in that neighbourhood."

While certainly there is no suggestion of a police policy or direction to document an entire demographic, police conceded that, statistically, it's "possible" that this has happened.

One of the many problematic aspects of police "carding" young men of colour, say critics, is the impact it has on young lives.

"It's just not arbitrary mass rounding up of any particular group of people from a geographic location or demographic circumstance," said Sloly. "Numerically you could probably get to that point in terms of total numbers.

"In reality it is impossible. Neighbourhood officers assigned to communities are simply not going about their business in that way."

Toronto Police Association Mike McCormack criticized the Star's use of census data comparisons, saying in a letter that the analysis is "flawed" and "distorted," and that "any comparison should be with the actual street population." That's who police "interact with and it is dramatically different from the census population."

The census was the only available benchmark, and the Star has used this analysis on four separate occasions, dating back to 2002.

What police, repeatedly, have shied away from addressing head on are the Star findings that in each of the city's patrol zones black people are more likely to be stopped and documented than whites, and that those likelihoods increase in more affluent, predominantly white areas.

The Star findings that blacks are treated differently are consistent with numerous academic studies and reports, including the 1995 Commission on Systemic Racism in the Ontario Criminal Justice System, which looked at policing, the courts and the correctional system.

The studies don't suggest overt racism is a main reason for the differences, though it may account for some of it. Implicit bias, where people act on biases they are unaware of, learned behaviour and the way systems are set up are other factors.

Regardless, the differences are there in study after study.

"Contact carding," argue some, reflects a deeply entrenched "institutional" mindset at Toronto Police Service.

Toronto police have dismissed comparisons of carding to New York, but critics say what's been going in Toronto — stops that sometimes involve patdowns and searches of bags, and can seem arbitrary — is an unofficial version of "stop-and-frisk."

"It's a different legal system, with a different legal tradition, in a different country. We do not engage in 'stop and frisk,' " Toronto police spokesperson Mark Pugash told the Star in August, following a U.S. court ruling that found the New York police program to be unconstitutional and an indirect form of racial profiling.

"Stop-and-frisk" is primarily about getting guns off the street. Contact cards are used to make connections. But many say the net results of the two programs are the same.

"Carding is effectively the same thing as 'stopping and frisking' because the facts found in the case law and the anecdotal evidence is overwhelming that the vast majority of people who are carded also get searched to some degree," said Toronto criminal defence lawyer Reid Rusonik, who has cross-examined dozens of police witnesses in various cases about carding.

Facing legal pressure, New York police recently volunteered to begin purging personal details from "stop-and-frisks" that involved no arrest or charge — the vast majority.

In Toronto, one in 10 people carded between 2008 and 2012 was arrested and charged by Toronto police during that same time period.

Toronto police capture personal details in these stops. They document the location and reason for contact, such as "general investigation" and "traffic stop," and the names and personal details of others involved in the stop, including car passengers and pedestrians.

The practice is nothing new and many other police services have similar procedures. Police use the database to search for personal connections and possible witnesses and suspects following crimes and say it is an invaluable investigative tool.

Contact cards also count in performance reviews and supervisors expect their officers to conduct a certain level of checks each shift. Police insist there are no official quotas.

In Part 2 of this series, the Star examines the contact cards of individual officers in search of patterns and potential problems.

The quality of cards varies. While some are completely filled out, others are missing information, such as skin colour.

Knia Singh, a youth mentor, law student and community organizer, and his friend Chris Williams, an academic and community activist, have never been arrested or charged with a crime but, aware of the practice of carding, filed a freedom-of-information request for their contact cards. Both are black.

Critics argue that contact carding is harmful when based on assumptions and misplaced suspicion.

Singh received a dossier of more than 50 pages of data police have compiled on him, some of it stemming from traffic violations. Amongst the pages are data from eight contact cards, indicating that his personal details and officer observations — like rudeness to police or Knia's suggestion he'd been racially profiled — have become part of the massive police database.

Singh, 39, who is the current chair of the Caribana Arts Group, says he was surprised by how many times he'd been documented, and by the dismal quality of the information.

The contact cards list him as ranging from five-foot-nine to a lofty eight feet. One card listed him as being born in Jamaica. (He was born in Toronto.) Another describes his appearance as "Caribbean."

"There's varying information in this and it concerns me," said Singh, who shared his stop information with the Star. "First of all, I don't know why I'm being documented in this way. And second of all, things are inaccurate."

"I've never been arrested but yet I have a file this thick in a Toronto police database on me," he said. "It's an insult and it's dangerous."

Williams, also 39, got back a single hit from the contact card database, stemming from a police stop he recalls quite well. . In April 2010, police from the Toronto Anti-Violence Intervention Strategy (TAVIS) unit boxed in his parked car after following him in a Toronto Community Housing property.

The police, said Williams, contended the reason for the interaction was an expired tag on his licence plate and argued that because it was after 5 p.m. on his birthday, he should have had the new tag in place.

Williams disagreed and no ticket was issued. But then came the questions, including a request for his phone number.

"I just want to get some of your information in case we need to do some sort of follow-up," Williams recalled one of the officers asking. They wanted all of his personal details, and made a physical description, noting he was "clean shaven." Looking at the data now, he said it feels like a description of a suspect.

He co-operated and is now part of the internal database.

Knia Singh and Chris Williams, on what Toronto police should hear about contact carding.

Williams and Singh share feelings that carding creates a list of names and circumstances that can stigmatize blacks, regardless of where they live, but more so for young people living in at-risk neighbourhoods.

John Sewell, another former Toronto mayor and head of the Toronto Police Accountability Coalition, found the Star analysis of carding "discouraging."

"Here's been all this criticism, and they're doing more of it."

The Toronto Anti-Violence Intervention Strategy, a provincially funded program implemented by Blair following a spate of gun violence in 2005, involves targeted policing in crime hotspots. TAVIS officers have more contacts with the public, and spend more time in at-risk neighbourhoods. The unit has the highest black carding rate of any police unit.

Although TAVIS officers have more contacts with citizens, every patrol officer in every division in the city is expected to conduct "street checks" as part of their daily duties. Done in the right way and in the right circumstance, it's considered good policing.

Police have instituted a carding receipt program at the insistence of the police board and other watchdog groups, so that those people carded at least know they have been documented.

But, like board chair Mukherjee, Noa Mendelsohn Aviv of the Canadian Civil Liberties Association questioned whether there has been a meaningful police response to the carding issue. The receipts, says, Mendelsohn Aviv, are not a useful accountability tool.

"Have they done something? Yes. Is it a meaningful and helpful response? Not nearly enough."

Through a youth legal rights program run by the CCLA, Mendelson-Aviv said the group has heard from youth about their interactions with police. "What's being created is distrust, alienation, and really the opposite of the goals of community policing."

Police say they are aware of problems. The police board and other groups will be closely watching for what comes, but they also want answers and accountability for what has happened.

"I don't think that with this track record the board can just take something on faith and trust," said Mukherjee.

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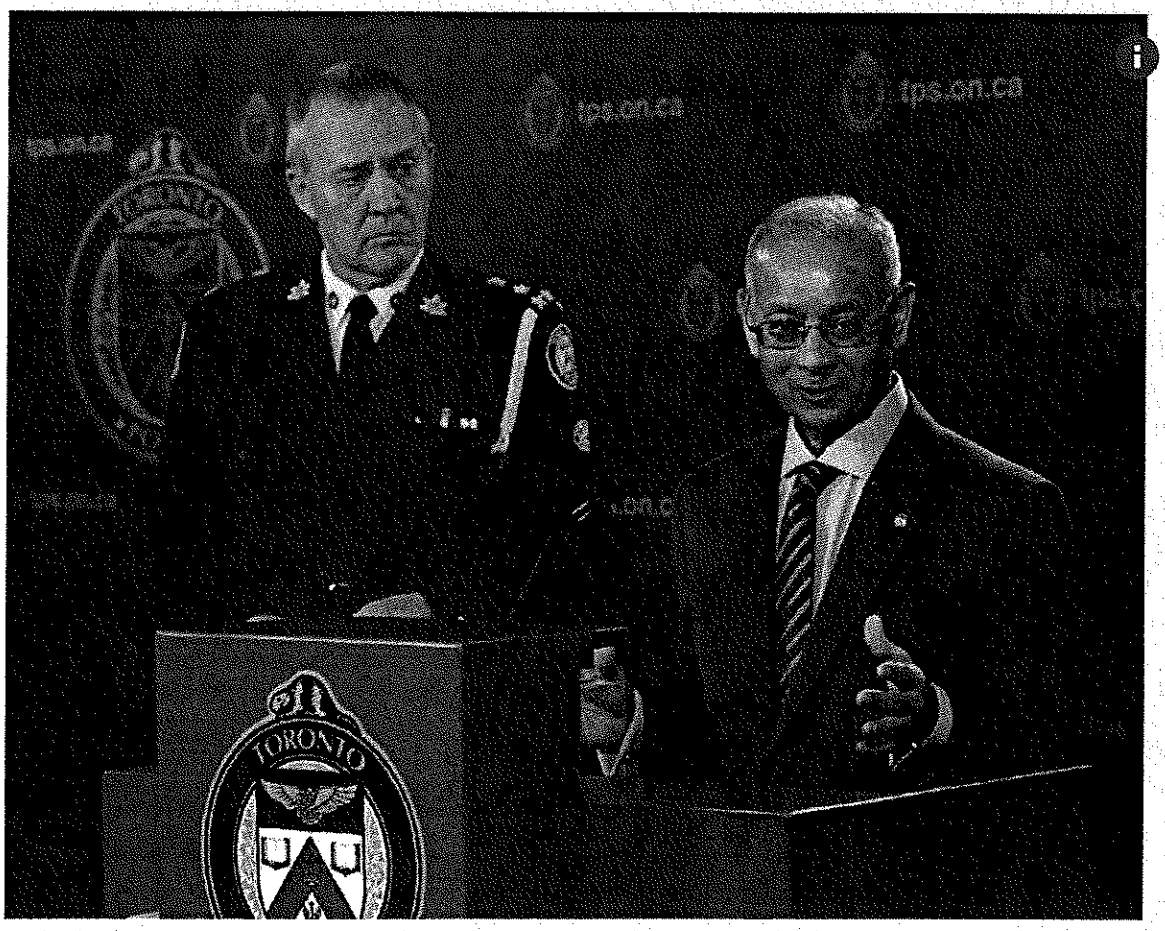
Advanced Star analysis package

Unacceptable pattern: Toronto Police Services Board chair Alok Mukherjee's blunt note-form response to a Toronto Star analysis of police contacts with citizens.

Tale of two cities: An analysis by the African Canadian Legal Clinic of similarities and differences between New York's stop and frisk policy and Toronto police stopping and documenting of citizens.

EDITORIAL

Toronto police 'carding' fix falls short: Editorial



One of the touchier aspects of "community policing" in Toronto and most other big cities involves being stopped and questioned in a street check. For police, it's a vital way to get a feel for neighbourhoods and deter crime. For people being questioned, it can be intrusive, even intimidating.

Moreover, as the Star's Jim Rankin and Patty Winsa have reported, a disproportionate number of the contact cards the police filed on

more than 1 million people between 2008 and 2012 — containing their names, addresses and other data — belonged to young black or brown city residents, mostly in non-criminal encounters. To critics of "carding," that smacked of racial profiling, and it triggered a healthy debate on the practice.

Toronto Police Services Board Chair Alok Mukherjee now hopes to pull the sting from the debate by rolling out an updated policy and set of procedures for what's being rebranded as "community engagement reports" at the board's meeting on Thursday. Outgoing Police Chief Bill Blair has given it his blessing.

And Mayor John Tory hails it as a "landmark in advancing bias-free policing." But that's probably overselling the changes. The "fix" being proposed falls well short of what critics, including the Star, have called for. It may ease the friction that carding has caused between police and visible minorities. Whether it will dispel that tension is far from certain.

That's something the police board ought to consider before it okays these changes. And the candidates to succeed Blair as police chief should be grilled for their views during the vetting process. This is too big an issue to walk by.

The new approach, a compromise between the board and the police cobbled together with the help of former Chief Justice Warren Winkler, fails to live up to expectations in several ways:

Informed consent. It doesn't require police to explicitly inform people that they aren't obliged to answer questions in many cases. That's a right every citizen has, but a lot of people don't know it.

This looks very much like a climb-down from the Community Contacts policy the police board set last April 16. That called on police to "proactively inform members of the public of their rights under the Charter (of Rights and Freedoms) and (the Ontario Human Rights) Code." It stipulated that "the Chief will establish procedures regarding the initiation of contacts to ensure that ... Community members know as much as possible in the circumstances about their right to leave" without answering questions.

The new version "seeks to encourage community engagements in which the community member freely participates," but doesn't require a proactive warning.

Detailed receipts. Police won't give people whose names and information they record a detailed receipt of the interaction. They'll just hand out a "business card" — and only if asked.

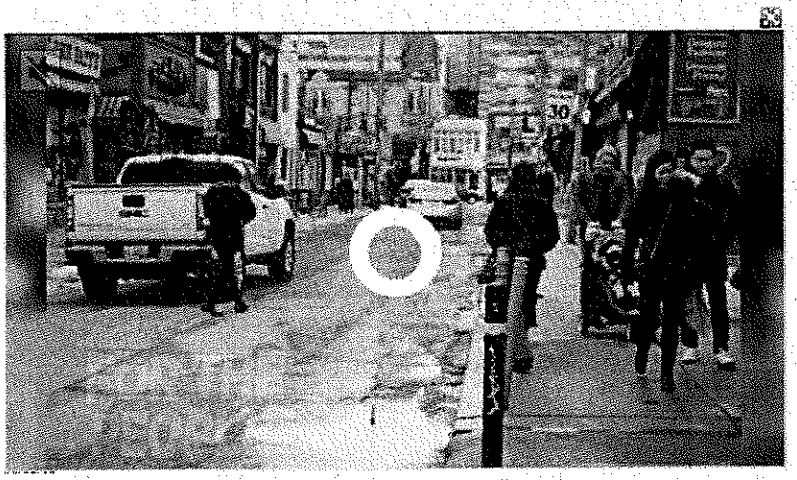
Limited scope. The circumstances in which police can card have been broadened. Under the board's reform last spring they had limited scope. They had to be actively preventing or investigating a crime, or trying to ensure the carded individual's safety. Under the new policy they will be able to stop anyone when "preserving the

peace," preventing crimes, or carrying out their common-law duties under the police act. That's a wider net.

The new approach isn't a complete dud. It calls for better police training to build community trust, it rules out carding as a factor in promotion, it expects police to be colour-blind, and it ensures that irrelevant data isn't stored. That's all to the good.

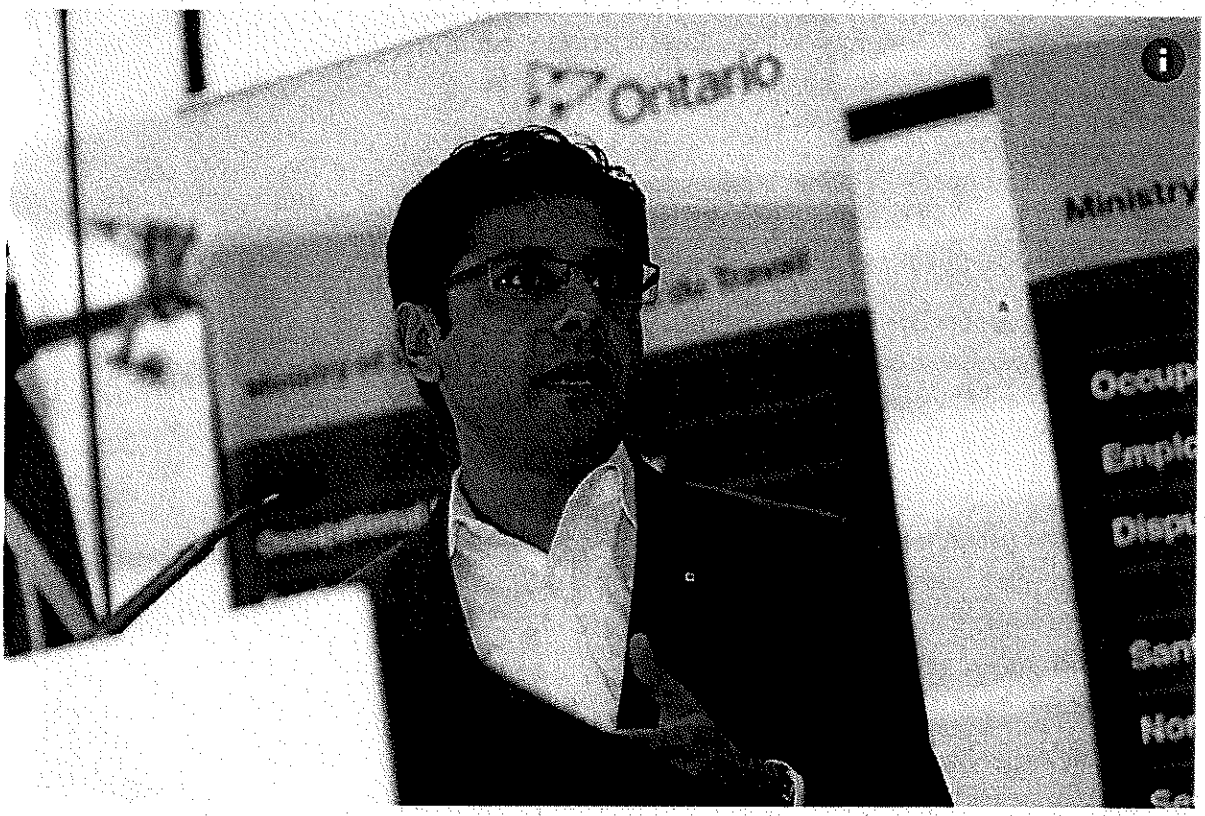
But still, it's a "fix" that falls short. This compromise needs close monitoring by the police board. A reform that leaves people feeling misused counts for little.

Read more about: John Tory, Bill Blair



Ontario should ban police carding rather than regulate it, critics say

By **Richard J. Brennan** Provincial Politics
Rob Ferguson Queen's Park Bureau
Tues., June 16, 2015



Critics say Premier Kathleen Wynne's government should scrap police carding rather than regulate it after consultations with police and human rights groups over the summer.

"If you're stopping someone arbitrarily, if you're asking questions without any reason, without any reasonable grounds, then that's unacceptable, that violates the Charter," said New Democrat MPP

Jagmeet Singh, a Brampton lawyer who has been stopped by police on the street for no reason.

"This is not a practice that can be regulated. It needs to be banned completely," he said after Community Safety Minister Yasir Naqvi announced new rules for street checks are coming this fall.

The Star has revealed in numerous stories that it is mostly people of colour who are arbitrarily stopped by police and asked to identify themselves, with information they provide going on police databases.

Naqvi, who acknowledged people stopped for no reason by police are "free to walk away" if they are not under arrest, said the plan is to introduce clear rules that officers across the province will have to follow.

"Our aim for this regulation is to prevent unjustifiable police stops for no reason or without cause," added Naqvi, whose move comes just over a week after Toronto Mayor John Tory (open John Tory's policard) reversed his support of carding.

The minister said while stories are legion of "racialized communities going about their business having done nothing wrong and stopped for no reason," police should still have the power to stop people for questioning when warranted.

The Police Association of Ontario said it supports the review but is worried "the value of police check procedures as depicted in the media will become a casualty of politics."

New rules "must not impede an officer's ability to conduct investigations that can lead to arrest," association president Bruce Chapman said in a statement.

He cited the example of police in an area with unsolved sexual assaults or break-ins, where officers may approach people who are not suspects but "could be a witness or know something that can lead to an arrest."

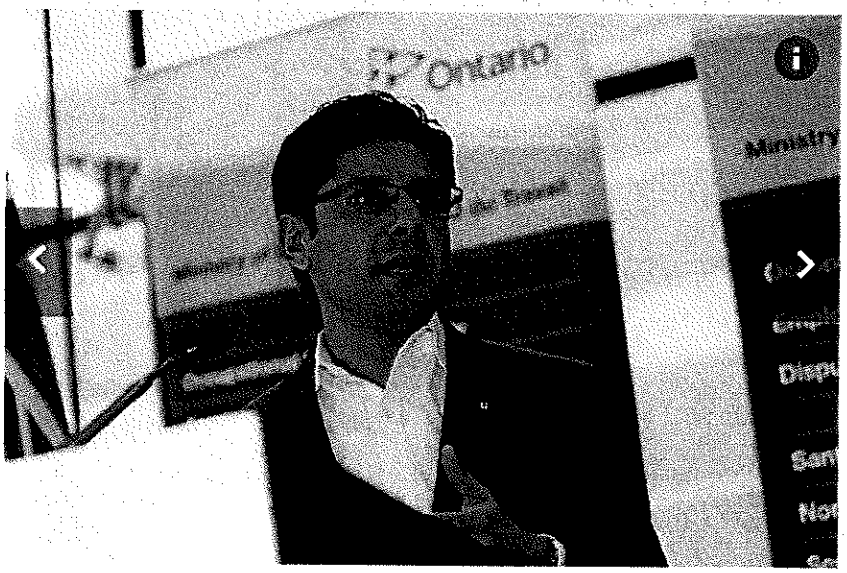
Desmond Cole, a freelance journalist and activist who has been carded by Toronto police, said the government's approach shows people in power won't "come right out and say that police have been abusing their authority and have been engaging in rampant racial profiling."

"That particular practice cannot be reformed, it must be eliminated," Cole told reporters, adding some people are afraid to walk away from officers "because police have authority."

Naqvi said the government will consult with police, the Ontario Human Rights Commission, civil rights advocates and others to come up with regulations that protect the public but don't get in the way of proper policing methods.

Toronto Police Chief Mark Saunders' honeymoon in the job was short-lived because of his refusal to end carding.

Earlier in Cambridge, Ont., Wynne said that carding is not isolated to Toronto and defended the summer consultations as necessary to understand what different police forces do in terms of street checks.



"Make no mistake, I am in no way supportive of a practice that would discriminate against people based on their skin colour, based on their age, based on their background and so we will work to make sure that whatever we put in place guards against that."

Federal Justice Minister Peter MacKay applauded restrictions on carding, saying that by giving police "carte blanche" to stop anyone without cause "the harm outweighs the value that brings to an investigation."

Read more about: Jagmeet Singh

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OHRC Comment regarding Canada's upcoming 21st and 22nd Reports to the UN Committee on Elimination of Racial Discrimination

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- show tags language

Tags

Code Grounds: race
Resource Type: submission

Ontario Human Rights Commission

Comment regarding Canada's upcoming 21st and 22nd Reports to the UN Committee on Elimination of Racial Discrimination

July 16 2015

Canada's combined 21st and 22nd periodic Reports on the International Convention on the Elimination of Racial Discrimination (ICERD)[1] are due for submission in November 2015 to the UN Committee on the Elimination of Racial Discrimination (CERD).

The Ontario Human Rights Commission (OHRC) oversees Ontario's Human Rights Code[2] and has a mandate consistent with the 'Paris' Principles relating to the Status of National Institutions.[3] In this regard, the OHRC provides periodic input to government and to UN human rights treaty bodies regarding Canada's reporting obligations.

Among other groups, Ontario's Human Rights Code provides for the protection of Indigenous peoples and racialized communities from discrimination in employment, housing, services and other areas, based on ancestry, race, colour, ethnic origin, place of origin, citizenship, creed, sex and other grounds. The Code applies to both government and private sectors. The Canadian Charter of Rights and Freedoms,[4] as well as international human rights instruments like the ICERD and the UN Declaration on the Rights of Indigenous Peoples,[5] help inform how Ontario's Code is interpreted and applied. The Code generally has primacy over other Ontario laws.

Ontario's Ministry of the Attorney General has asked the OHRC to provide input on the following two questions in regards to Canada's upcoming Reports. The OHRC's comments below cross reference the relevant Concluding Observations issued by the CERD at Canada's last appearance in February 2012[6] as well as the relevant articles of the ICERD.

1. **Have there been any recent developments with respect to anti-racism/non-discrimination or employment equity legislation, policies, programs or best practices in your jurisdiction?**

Racial profiling and arbitrary police stops: Concluding Observation 7[7] and 11;[8] Articles 2 and 5

For some time now, the OHRC has been calling for changes to the Toronto Police Service's policy, procedures and practices on street checks called "carding" – where, more often than not, people are arbitrarily stopped in part because of their skin colour, questioned and asked to identify themselves to police without reasonable justification.[9]

Statistics show that Black people were stopped more often – and were much more likely than White persons to face stops that resulted in no arrest or charges being laid.[10] This practice is corrosive and demeaning – in the OHRC's opinion, it amounts to racial profiling and is illegal.

A Toronto Police Services Board (TPSB) 2014 policy addressed racial profiling directly, recognizing obligations under the Canadian Charter of Rights and Freedoms and Ontario's Human Rights Code. Community groups and the OHRC generally supported the 2014 policy. However, the TPSB backed off its commitment in March 2015 but then reinstated the 2014 policy approach in June 2015 following significant public backlash.

To prevent racial profiling, the OHRC, legal experts and members of the community have said that police policy and procedures for street checks must:

- Guide and limit officer discretion to stop and question people
- Require that officers tell the people they stop about their right to leave and not answer questions, as much as possible in the circumstances
- Demonstrate effective monitoring and accountability including race-based data collection to identify racial bias
- Provide transparency through receipts; and
- Immediately purge carding intelligence data, already collected, that lacks a non-discriminatory explanation.

The OHRC welcomed the TPSB's renewed commitment to this approach.[11] Returning to the 2014 Policy could help direct the Toronto Police Service to only stops people for street checks when there is a legitimate, non-discriminatory reason to do so. The Policy is far from perfect but it reflects a great deal of work by members of the community, advocates, organizations and the Board and Service to work towards ending racial profiling.

The OHRC also welcomes the Ontario government's recent announcement that it will move to standardize police street checks and will establish rules to ensure these encounters are without bias.[12] The Government has committed to consulting with the community and organizations including the OHRC.

Police use of force: Concluding Observations 7 and 11; Articles 2 and 5

Concerns have been raised for years that police are more likely to use force in their interactions with African Canadians and Indigenous peoples. For example, a report published by the Urban Alliance on Race Relations revealed that Black communities in particular felt that they were "disproportionately vulnerable to police violence" and that racialized people are disproportionately likely to be killed by the police.[13]

The OHRC's own 2003 inquiry into racial profiling reported similar findings[14] and so have decisions from the Human Rights Tribunal of Ontario and the courts since then.[15]

In 2014, the OHRC made a submission to the Ontario Ombudsman's Investigation into the direction provided to police by the Ministry of Community Safety and Correctional Services (MCSCS) for de-escalating conflict situations.[16] The OHRC recommended that MCSCS should provide Ontario police services with appropriate direction and officers should receive training in human rights and bias, de-escalation, sensitivity and de-stigmatization in use of force. The training of officers should be supported by appropriate police service policies and procedures.

Tribunals and court decisions are identifying similar concerns. In *Nassiah v. The Regional Municipality of Peel Police Services Board*, the Human Rights Tribunal of Ontario Tribunal said: "if officers are not appropriately trained on what may constitute racially biased profiling or investigation, they may consciously or subconsciously engage in this form of discriminatory conduct."[17]

In two recent decisions involving three cases of alleged racial discrimination by police, the Human Rights Tribunal of Ontario found that human rights claimants had the right to pursue officer misconduct complaints under Ontario's Police Services Act and Human Rights Code. The African Canadian Legal Clinic, the Metro Toronto Chinese & Southeast Asian Legal Clinic, the South Asian Legal Clinic of Ontario and the OHRC intervened in the cases.[18]

The OHRC is seeking to intervene in the "Neptune 4" case alleging inappropriate use of force, being heard by the Toronto Police Service Disciplinary Tribunal.[19] The case was launched after four Black teens were arrested at gunpoint by two Toronto Police officers in 2011 on their way to a Pathways to Education tutoring session. Video surveillance shows one of the teens being punched and pulled to the ground. Ontario's Office of the Independent Police Review Director found that charges of officer misconduct were warranted.

The OHRC's 2014 submission to the Ombudsman's Investigation also recommended expanding data collection about the circumstances related to police use of force province-wide given that there is very little information currently available in Canada. One study suggested that both Indigenous peoples and African Canadians were "highly over-represented" in independent investigations into circumstances surrounding serious injury or death to civilians involving police by Ontario's civilian law enforcement watchdog agency.[20]

Migrant workers – police DNA sampling: Concluding Observation 23;[21] Articles 2 and 5

In December 2013, Justicia for Migrant Workers (J4MW), a non-profit group that promotes the rights of migrant farm workers, filed a complaint with the Ontario Independent Police Review Director (OIPRD) alleging that the Ontario Provincial Police (OPP) engaged in racial profiling when requesting DNA samples from migrant workers near Vienna, Ontario as part of a sexual assault investigation in October and November 2013. It is alleged that the police collected DNA samples from approximately 100 "Indo and Afro-Caribbean" male migrant workers who did not match the suspect description apart from their dark skin colour.

In March 2014, the OIPRD announced that it was conducting a systemic review of the OPP's practices for obtaining voluntary DNA samples from specific groups.

In April 2014, the OHRC made a submission to the OIPRD's Systemic Review.[22] The submission provided information about racial profiling and how to identify it; explained why the OPP's DNA collection from migrant workers appeared to be consistent with racial profiling, and how police DNA collection may disproportionately affect racialized and marginalized groups; and made recommendations on how the OPP can address racial bias in its policing.

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Institutional change in policing: Concluding Observations 7 and 11; Articles 2 and 5

In order to have a real impact, the OHRC recognizes the need to address racial profiling in policing through structural, policy and procedural change and training.

For some time, the OHRC has undertaken multi-year organizational change agreements with several law enforcement agencies including Toronto Police Services.[23] Currently, the OHRC is working with Windsor Police Services to address racial profiling and other forms of discrimination in employment and service delivery.[24] The OHRC also delivers training to police officers across the province in partnership with the Ontario Police College.

To support these initiatives, in 2011, the OHRC published Human rights and policing: creating and sustaining organizational change, a guide for police services.[25]

In 2012, the OHRC reached a settlement with the Ottawa Police Services Board that required Ottawa Police Service to collect race-based data on traffic stops for at least two years.[26] The Traffic Stop Race Data Collection Project began in June 2013. The OHRC remains closely involved in efforts to ensure meaningful analysis and use of the data to address and prevent racial profiling in policing, now described as the largest study of its kind in Canadian policing.[27]

Institutional change in prisons: Concluding Observation 11; Articles 2 and 5

The OHRC continues its work with the Ministry of Community Safety and Correctional Services (MCSCS) and the Ministry of Government and Consumer Services (MGCS) under a human rights institutional change agreement.[28] This long-term project, which arose from the settlement of a long-standing discrimination complaint by an Indigenous jail guard, has now been extended to 2017.

The MCSCS has done critical planning and begun to put in place some major initiatives including reviewing training curricula, creating criteria and strategies for developing and reviewing policies and programs from human rights and Indigenous perspectives. The OHRC has also worked on plans for evaluating outcomes.

Foreign trained worker requirements: Concluding Observations 16[29] and 19;[30] Article 5 (e) (i)

In 2013, the OHRC released its Policy on removing the "Canadian experience" barrier.[31] The OHRC's position is that a strict requirement for "Canadian experience" is prima facie discrimination and can only be used in very limited circumstances. Such requirements can negatively affect individuals because of their place of origin, ethnic origin, citizenship and other grounds.

During the OHRC's consultation, many individuals and front line community groups reported that employers use unjustified Canadian experience requirements to reject applicants with foreign work experience or training. The OHRC also heard that internationally trained professionals experience many barriers to finding jobs including regulatory bodies and employers not recognizing foreign credentials and experience.[32] The Policy says that governments, regulatory bodies and others have a role to play to identify and remove barriers.

The OHRC has been working with Ontario's Office of the Fairness Commissioner to educate regulatory bodies about their human rights obligations. The OHRC has also reached out to employers, human resource professionals and community organizations. The OHRC has also written to domestic and

international accounting bodies[33] and has advised government on pending change to accounting professions legislation.[34]

Indigenous peoples impact and benefits agreements: Concluding Observation 19; Article 5 (e) (i)

In 2014, the OHRC released a statement on designating employment and contracting provisions in Impact and Benefit Agreements (IBAs) as permissible special programs under Ontario's Human Rights Code.[35] IBAs are becoming an industry standard for resource development projects that are located on or impact Indigenous people' traditional lands and rights. The agreements often contain employment and contracting provisions that give priority for training, hiring and contracting to Indigenous peoples.

Employment and contracting provisions in IBAs can offer a meaningful response to the historical inequality, discrimination and disadvantage that Indigenous peoples have and continue to face. The OHRC supports developing and implementing these provisions as part of IBAs, where Aboriginal governments choose to enter into them, to promote substantive equality for Indigenous peoples in Ontario. The OHRC will be consulting with Indigenous communities and other groups on how best to develop and implement IBAs.

Female migrant agricultural worker hiring: Concluding Observations 16 and 23; Article 5 (e) (i)

In 2014, the OHRC released a Position Statement – Discrimination on the basis of sex in recruitment for the Seasonal Agricultural Workers Program (SAWP).[36] It had come to the OHRC's attention that employers in Ontario are hiring almost exclusively men to work on their farms under the SAWP. Research shows that each year, less than 4% of the workers that come to Ontario through the SAWP are women.

Ontario's Human Rights Code applies to Ontario employers, including farmers who recruit temporary foreign workers through federal programs as well as administrators and recruiters who operate in Ontario. An employer cannot use an employment agency or administrator to hire employees based on preferences related to sex or other *Code* grounds unless they can show these are genuine job requirements.

Police record checks: Concluding Observations 16 and 19; Article 5 (e) (i)

The Ontario government has introduced a Bill[37] that if passed would legislate standards for police record checks based on guidelines[38] developed by the Ontario Association of Chiefs of Police. The OHRC worked with the OACP to develop the initial guidelines[39] after learning about the negative effect police record checks have on groups protected under Ontario's Human Rights Code, particularly Indigenous peoples, racialized communities and people with mental health and addiction disabilities. The OHRC provided advice to government in April 2015.[40] The proposed legislation, introduced in June, would help to address some of the barriers these groups experience in accessing employment, housing and other services.

Groups like the Canadian Civil Liberties Association and the John Howard Society of Ontario support legislating standards for police record checks and are also calling for complementary changes to Ontario's Human Rights Code to bring a better balance to public policy goals for human rights, privacy, offender rehabilitation, crime prevention and public safety.[41]

A police record check is often used as part of a screening process for employment, volunteering, and when applying for a professional licence, and sometimes in rental housing.

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Poverty and adequate housing: Concluding Observations 7, 16 and 19; Article 5 (e) (iii) and (iv)

Members of Indigenous and racialized communities have historically experienced socio-economic disadvantage and continue to face prejudice, discrimination and harassment when trying to access housing accommodation. They report that private sector landlords refuse to rent to them or they face discrimination and harassment as tenants based on ancestry, ethnicity, race or place of origin, among other grounds. These groups are also more likely to be in need of affordable housing. Community support advocates and organizations have raised concerns with the OHRC that the lack of affordable and suitable housing is a systemic social barrier across Ontario.[42]

Data from Statistics Canada published by the Canadian Human Rights Commission[43] show that the proportion of Indigenous adults in low-income status is much higher than that of non-Indigenous adults. For example, 53.4% of Indigenous women age 65+ are in low-income status compared to 30.9% of non-Indigenous women age 65+. The data also show that 20.4% of Indigenous households in Canada are in core housing need compared to 12.4% of non-Indigenous households.

In 2013, the OHRC made a submission to the Government's review of Ontario's Poverty Reduction Strategy.[44] Affordable housing is an essential element of the Strategy. The OHRC recommended breaking down the Strategy's success indicators, including the housing measure, to show the impact of the Strategy on immigrants, women, lone mothers, people with disabilities, Indigenous peoples and racialized groups who disproportionally experience poverty. The Government's 2014 Poverty Reduction Strategy reflects in part the OHRC's recommendation by committing to measure the poverty rate of these vulnerable groups.

At the same time, public concern has been raised through the media that the Government did not meet its target for reducing poverty of children and their families by 25% during the five years of its first strategy. There is also concern that the Government has not yet set a target for its new focus on homelessness.

Earlier this month, the OHRC made a submission[45] to the government's consultation on updating Ontario's Long-Term Affordable Housing Strategy.[46] The consultation guide appropriately recognizes that an updated Strategy should support the diverse needs of Ontarians including Indigenous peoples. The OHRC recommended that the Ontario government report yearly on, among other measures, the poverty rate, the rate of core housing need (unaffordable, inadequate, unsuitable) and progress towards a homelessness reduction target for immigrants, Indigenous peoples and racialized communities, among other groups.

Child and Family Services: Concluding Observations 7, 16 and 19; Article 5 (e) (iv)

Ontario's Child and Family Services Act (CFSA)[47] governs many of the province's programs and services for children and youth, including welfare, youth justice, developmental services, residential services, community support, Aboriginal child and family services, and adoption.[48]

One of the stated purposes of the CFSA is "To recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family."

The Métis Nation of Ontario reports that children's aid society workers routinely fail to ask about Aboriginal identification, and even if they do ask, the client's cultural identity as Métis is usually then

ignored. Workers equate "native" or Aboriginal identity with First Nations only. This appears to be contributing to the lack of appropriate Métis-specific recognition and referrals for Métis involved in the child welfare system, and to perpetuating systemic discriminatory treatment toward Métis.[49]

The Aboriginal Advisor's report on the status of Aboriginal child welfare in Ontario[50] and media reports [51] have also raised concerns about insufficient funding and lack of culturally appropriate services, leading to Indigenous families falling between the cracks and more Indigenous children in the care of the state.[52]

In its 2012 submission to the UN Committee on the Rights of the Child, the African Canadian Legal Clinic (ACLC) raised concerns about the overrepresentation of African Canadian youth and children in state care.[53] The media has also reported on the overrepresentation of black children living in foster care and group homes, and the ACLC and the Jamaican Canadian Association say racial profiling is a factor.[54]

In its submission[55] to Ontario's 2014 review of the CFSA, the OHRC made a number of recommendations including:

- Amending terminology in the CFSA to be more inclusive of First Nations, Métis and Inuit peoples
- Amending the CFSA to recognize, in addition to cultural, religious and regional differences, that respect for racial, ethnic, linguistic and gender identities are also in the best interests of the child
- Monitoring the application of the CFSA, including collecting data, and reporting on the extent that child and family services are separating Indigenous and racialized children from their family environment, or otherwise not meeting their needs
- Amending or interpreting the CFSA to reflect that children should be placed in services and families affiliated with, or culturally sensitive to, their religion or culture, whenever practicable
- Amending or interpreting the provisions of the CFSA related to the child's right to consent and to be heard, to respect and/or reflect the child's identity and needs related to creed, race, ethnicity and other protected grounds under Ontario's Human Rights Code
- Reviewing the CFSA and its application to make sure inadequate housing or poverty is not a stand-alone factor for considering whether the child's well-being is at risk.

Violence against Indigenous women and girls: Concluding Observation 17;[56] Article 5 (b)

A Royal Canadian Mounted Police (RCMP) 2014 report showed that 1,017 Aboriginal women and girls were murdered between 1980 and 2012.[57] The homicide rate was approximately 4.5 times higher for Aboriginal women than other women in Canada.[58] An update to the report shows that as of April 2015, for all police jurisdictions in Canada, there were 174 missing Aboriginal female cases.[59] This represents 10% of the 1,750 missing females reported on the Canadian Police Information Centre (CPIC), while Aboriginal women make up approximately 4% of the female population in Canada.[60] Amnesty International Canada[61] and research from the Native Women's Association of Canada have reported similar findings.[62]

In March 2015, the UN Committee on the Elimination of Discrimination against Women released its Report of the inquiry concerning Canada in regards to missing and murdered Indigenous women.[63] The Committee is concerned that, while the focus of the State party is on improving the response of the justice system and therefore on improving investigations, prosecution and punishment of perpetrators,

the State party fails to specifically address the issue of missing and murdered Aboriginal women, by properly taking into account its socio-economic root-causes and its link with the wider issue of violence against Aboriginal women.[64] Among its recommendations, the Committee called for promoting the use of human rights legislation by Indigenous women as a tool to combat discrimination and acts of violence.[65]

In its Final Report released in June,[66] Canada's Truth and Reconciliation Commission, remarked that: "More research is needed, but the available information suggests a devastating link between the large numbers of missing and murdered Aboriginal women and the many harmful background factors in their lives. These include: overrepresentation of Aboriginal children in child-welfare care; domestic and sexual violence; racism, poverty, and poor educational and health opportunities in Aboriginal communities; discriminatory practices against women related to band membership and Indian status; and inadequate supports for Aboriginal people in cities. This complex interplay of factors—many of which are part of the legacy of residential schools—needs to be examined, as does the lack of success of police forces in solving these crimes against Aboriginal women."

In 2013, the Canadian Association of Statutory Human Rights Agencies (CASHRA), of which OHRC is a member, released a motion calling for the Government of Canada to work with Indigenous peoples' organizations to develop and implement a national action plan.[67] A national action plan should focus urgent attention on addressing and preventing the root causes of violence against Indigenous women and girls, including poverty and systemic discrimination. It further called on the Government to establish an independent and inclusive inquiry into missing and murdered Indigenous women and girls in Canada.

In March 2015, the Government of Ontario announced its Action Plan to Stop Sexual Violence and Harassment.[68] The Action Plan says that a Joint Working Group on Violence Against Aboriginal Women is developing a long-term strategy to end violence against Aboriginal women. The Action Plan also calls on the federal government to support the National Aboriginal Organizations' call to establish a national public inquiry into missing and murdered Aboriginal women and girls in Canada.[69]

2. **Have any consultations taken place in Ontario with civil society, ethno-cultural communities and/or Aboriginal organizations related to combating racism and racial discrimination?**

OHRC racial profiling consultation and pending policy: Concluding Observations 16 and 19; Article 5

In the coming months the OHRC will begin work on a full Policy on preventing racial profiling that will help organizations meet their responsibilities under the Human Rights Code.[70] To support its research and the development of the Policy, the OHRC has launched an online survey on racial profiling and a request for papers for an upcoming Policy dialogue on racial profiling.[71] The OHRC's work will also take a closer look at the effects of racial profiling on Indigenous peoples across Ontario.

Dialogue between Indigenous peoples and other racialized communities: Concluding Observations 17 and 19; Article 5

In November 2013, the OHRC co-organized a forum, "From Remembrance to Reconciliation," along with community organizations representing various communities of colour for a day of dialogue to build solidarity with the Indigenous communities.[72] The Chief Commissioner of Truth and Reconciliation Commission and the former Chief of the Assembly of First Nations spoke as well. Participants reflected

on how their own histories shaped their understanding of violence, oppression, and racism, the stereotypes they learned about Indigenous peoples in Canada, and the challenges and opportunities of building alliances together.[73]

In a recent statement marking June 21st National Aboriginal Day in Canada, the OHRC remarked that the recent report of the Truth and Reconciliation Commission makes it painfully clear that one day is not enough. The OHRC acknowledged its responsibility, in cooperation with others, to help promote and protect the human rights of Indigenous peoples in Ontario. The OHRC highlighted its recent outreach activities with Indigenous communities in Sioux Lookout, Kenora, Thunder Bay, Ottawa and Sault Ste. Marie.[74]

Ontario's permanent roundtable on violence against women: Concluding Observation 17;[75] Article 5(b)

The OHRC is a member of the Action Plan Advisory Roundtable and continues to advise the government and work with community partners to ensure that action is taken to stop sexual harassment and sexual violence including violence against Indigenous women and girls.

The OHRC has a long history of addressing these issues from an intersectional perspective. It's Policy on preventing sexual and gender-based harassment, updated in 2013, recognizes that sexuality is sometimes intertwined with racism.[76] People may hold stereotypical and racist views about someone's sexuality based on their ethno-racial identity and these views may be behind some forms of sexual harassment. The Human Rights Tribunal of Ontario has made similar findings.[77]

Ontario's proposed police record checks legislation: Concluding Observations 16 and 19; Article 5 (e) (i)

During the Ontario government's recent review of public concerns with police record checks, the OHRC made a submission in April 2015 welcoming the government's proposed approach for new legislation. At the same time, the OHRC commented that this type of legislation would only partially address the negative effect police record checks have on certain groups, including Indigenous peoples and racialized communities. Organizations have been calling for changes to Ontario's Human Rights Code to bring a better balance to human rights, privacy, offender rehabilitation, crime prevention and public safety.[78]

OHRC consultation report on discrimination because of creed and pending policy – intersection with racism

In 2013, the OHRC released a human rights and creed consultation report,[79] which provides an extensive overview the OHRC's own research as well as submissions from many organizations and input at policy and legal dialogues and other forums held by the OHRC. The report looks at the past and present social trends and dynamics that contribute to contemporary forms of discrimination based on creed including the intersectional relationship between religion, race and other grounds.

Scholars have noted that it is hard to disentangle religious-based prejudice and discrimination from that based on racism, xenophobia and ethnocentrism. The close relationship between religion, race and ethnicity for many creed communities, and the visibility of such differences (ethnic, racial and religious) from the mainstream, have exposed many ethno-religious minority Ontarian communities to intersecting forms of discrimination and harassment. After 9/11, this intersectional prejudice and animosity has at times resulted in the broad targeting of visible minority communities associated with Islam (e.g. Arabs and South Asians), regardless of actual religious affiliations.

The OHRC's 2012 Creed case law review[80] cites several decisions recognizing the intersection relationship between racism and religious discrimination. One case involved a turban-wearing Sikh man who was denied entry to a bar because, according to the doorman, the bar "had an image to maintain" and did not want "too many brown people in."[81]

In its review of applications to the Human Rights Tribunal of Ontario between 2010 and 2012, the OHRC found that an overwhelming majority citing creed also cited a race-related ground (such as race, ancestry, colour, ethnic origin, place of origin) as an intersecting basis of discrimination.

Research also suggests that Indigenous peoples continue to face significant barriers practicing Ontario's longest standing spiritual traditions, which are often misunderstood or inadequately recognized by institutional authorities as warranting accommodation. This is another form of intersectional racism discrimination based on creed, ancestry and related grounds.

In 2013, the OHRC conducted an online survey with responses from 1,719 people. Various forms of racism and xenophobia were interwoven in reported experiences of creed discrimination and harassment. A recurring issue raised was racial profiling of Muslims by security personnel. The OHRC published a summary of findings in 2014.[82]

The consultation report, case law review and survey results include many insights that have guided the OHRC in developing its new Policy on preventing discrimination based on creed to be released later this year. The Policy will have a separate part dealing specifically with Indigenous spiritual beliefs and practices and related human rights obligations.

OHRC mental health and addictions consultation report and policy – intersection with racism

In 2013, the OHRC released its consultation report, *Minds that Matter*, on human rights, mental health and addictions.[83] The OHRC was told that people from racialized communities and in particular, African Canadian men, experience harsher treatment than non-racialized people in the mental health and forensic mental health systems (where people are also involved in the judicial system).

People were concerned that there is a high representation of racialized people with mental health issues in the criminal justice system, and that African Canadian men with mental health issues are more likely to enter the criminal justice system than the community mental health system.[84] One person from an agency serving racialized communities said misdiagnosis may be common because of stereotypes and cultural and language barriers.

A growing body of international research supports many of these findings.[85] Some studies suggest there are higher rates of restraint and confinement for people of African or Caribbean descent compared to people of other ethnic backgrounds, although the reasons for this may be complex.[86]

Many organizations and individuals also spoke of how Indigenous peoples in Canada have been affected by a long history of colonization, institutionalized racism and discrimination, such as the residential school policies. The Ontario Federation of Indian Friendship Centres (OFIFC) said that for the urban Aboriginal population, this has led to intergenerational trauma, family violence, poverty, homelessness, lack of education and incarceration. All of these have serious negative impacts on people's mental health.

Mental health issues such as suicide, depression and substance abuse are higher in many Aboriginal communities than in the overall population. The OFIFC stated that the Aboriginal suicide rate is 2.1 times the Canadian rate; Aboriginal women are three times more likely to commit suicide than their non-Aboriginal counterparts.[87] The suicide rate for Aboriginal youth aged 15 – 24 is five to six times that of the non-Aboriginal population.[88]

Stereotypes about drug and alcohol use were raised in the consultation. Many people described how they were treated unequally in services, exposed to harassing comments, or profiled as a security risk based on stereotypes about their Aboriginal identity and misperceptions about alcohol and drug use. The OFIFC said that the provincial mental health reform in the 1990s that led to hospital closures meant that many Aboriginal people with mental health issues and addictions were released into urban areas and not back to their communities of origin.

Many said lack of affordable housing was a major issue of concern and that it is much harder to get housing because of intersecting identities of having a mental health issue or addiction, and being of Aboriginal ancestry.

In 2014, the OHRC released its Policy on preventing discrimination based on mental health disabilities and addictions. The Policy cites Article P of the Preamble of the UN Convention on the Rights of Persons with Disabilities which recognizes "the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status."

[1] www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

[2] www.ontario.ca/laws/statute/90h19

[3]www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions...

[4]http://laws-lois.justice.gc.ca/eng/const/page-15.html

[5]http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?O...

[6]http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?sy...

[7] The Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including Aboriginal (indigenous) peoples, African Canadians and immigrants living in its territory, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party.

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.

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[8] 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, thereby contributing to the overrepresentation of African Canadians in the system of criminal justice of Canada (arts. 2 and 5). ...

The Committee recommends that the State party:

a. Take 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. Investigate and punish the practice of racial profiling;
c. Train prosecutors, judges, lawyers, other judicial and police officers in
d. the criminal justice system on the principles of the Convention;
e. Provide the Committee with statistical data on treatment of African Canadians in the criminal justice system;
f. Conduct a study on the root causes of the overrepresentation of Africans Canadians in the system of criminal justice.

[9] See OHRC Written Deputation on: Policy on Community Engagements Procedure 04-14: Community Engagements; April 2, 2015, online: www.ohrc.on.ca/en/news_centre/ohrc-written-deputation-policy-community-e.... Also see OHRC Opinion Editorial: Political will needed to end carding; May 23, 2015, online: www.ohrc.on.ca/en/news_centre/opinion-editorial-political-will-needed-en....

[10] Toronto Star, "Known to Police" investigative series; analysis of Toronto police data from 2008 to 2012; online: www.thestar.com/news/gta/knowntopolice2013/2013/09/27/as_criticism_piles...

[11] www.ohrc.on.ca/en/news_centre/step-forward-police-street-checks

[12] http://news.ontario.ca/mcscs/en/2015/06/ontario-to-standardize-police-st...

[13] http://urbanalliance.files.wordpress.com/2012/05/savinglivesreport.pdf

[14] www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling

[15] The OHRC's involvement in significant racial profiling cases has helped to advance the law on racial profiling as a prohibited form of discrimination under the Ontario Human Rights Code for example: Shaw v. Phipps, 2012 ONCA 155 (CanLII); Peel Law Association v. Pieters, 2013 ONCA 396 (CanLII); Maynard v. Toronto Police Services Board, 2012 HRTO 1220 (CanLII); Nassiah v. Peel Police Services Board, 2007 HRTO 14 (CanLII).

[16] www.ohrc.on.ca/en/submission-ohrc-ombudsman%E2%80%99s-investigation-dire...

[17] 2007 HRTO 14 at para. 209 (CanLII)

[18] See: www.ohrc.on.ca/en/de-lottinville-and-application-section-451-ontarios-hu.... Also see: www.ohrc.on.ca/en/summary-ontario-community-safety-and-correctional-serv....

[19] www.ohrc.on.ca/en/news_centre/ohrc-seeks-leave-intervene-racial-profilin...

[20] Scot Wortley, "Police use of Force in Ontario: An Examination of Data from the Special Investigations Unit, Final Report" (2006) Research project conducted on behalf of the African Canadian Legal Clinic for submission to the Ipperwash Inquiry at 37, online: www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projec...

[21] "Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ..."

[22] www.ohrc.on.ca/en/news_centre/allegations-racial-profiling-migrant-worke...

[23] www.ohrc.on.ca/en/human-rights-project-charter-tps-tpsb

[24] www.ohrc.on.ca/en/human-rights-project-charter-windsor

[25] www.ohrc.on.ca/en/human-rights-and-policing-creating-and-sustaining-orga...

[26] www.ohrc.on.ca/en/news_centre/ottawa-police-agree-collect-race-based-data

[27] www.ohrc.on.ca/en/ohrc-today-annual-report-2014-2015/organizational-change

[28] www.ohrc.on.ca/en/human-rights-project-charter-ohrc-mcscs-mgs

[29] [T]he the 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 (art. 5). ... the Committee recommends that the State party take concrete specific measures to foster the effective integration at federal, provincial and territorial levels of African Canadians into Canadian society by effectively ensuring the implementation of its non-discrimination legislation, ... The Committee requests that the State party provide it with information on specific measures taken as well as on their concrete results.

[30] [T]he Committee remains concerned about the persistent levels of poverty among Aboriginal peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present (art. 5). ... The Committee recommends that the State party, in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through: ...

> (b) Intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba; ...
>
> (f) Discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding;

The Committee requests that the State party, in consultation with indigenous peoples, consider elaborating and adopting a national plan of action in order to implement the United Nations Declaration on the Rights of Indigenous Peoples.

The Committee also requests that the State party provide it with information on the progress and concrete results of such programmes and policies, in its next periodic report. 107

[31] www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-...

[32]www.fairnesscommissioner.ca/index_en.php?page=about/current_projects/can...

[33] See 4.I Employment: www.ohrc.on.ca/en/ontario-human-rights-commission-submission-regarding-s...

[34]www.ohrc.on.ca/en/news_centre/letter-hon-madeleine-meilleur-re-accountin...

[35]www.ohrc.on.ca/en/employment-and-contracting-provisions-impact-and-benef...

[36] www.ohrc.on.ca/en/news_centre/position-statement-%E2%80%93-discriminatio...

[37]www.ontla.on.ca/web/bills/bills_detail.do;jsessionid=c72d607930d897183d6...

[38]www.oacp.on.ca/Userfiles/Files/NewAndEvents/PublicResourceDocuments/GUID...

[39]www.ohrc.on.ca/en/news_centre/police-record-checks-guideline-eliminates-...

[40] www.ohrc.on.ca/en/news_centre/ohrc-supports-makes-recommendations-legisl...

[41] The John Howard Society of Ontario's report, Help Wanted: Reducing Barriers for Ontario's Youth with Police Records (2014), found that young Ontarians from marginalized populations – Aboriginal peoples, racialized/immigrant communities, individuals with mental illness and addictions or developmental disabilities, etc. – are more likely to come into contact with the police and justice system, and thus, have a police record, which in turn is one of the most significant barriers to employment and employability. The Canadian Civil Liberties Association's report, False Promises, hidden costs: The case for reframing employment and volunteer police record check practices in Canada (2014), raises similar concerns.

[42] The right to housing and the state of affordable, available housing in Ontario and Canada is reported on in great depth in the OHRC's *Human rights and rental housing in Ontario: Background paper* (2007); its housing consultation report, *Right at Home* (2008); and in its *Policy on human rights and rental housing* (2009); as well as in *Minds that Matter: Report on the consultation on human rights, mental health and addictions* (2012), and its *Policy on preventing discrimination based on mental health disabilities and addictions* (2014); online: www.ohrc.on.ca.

[43] Report on Equality Rights of Aboriginal People, Canadian Human Rights Commission 2013, online: www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf

[44] www.ohrc.on.ca/en/ohrc-letter-regarding-second-poverty-reduction-strateg...

[45]www.ohrc.on.ca/en/commenting-ontario%E2%80%99s-long-term-affordable-hous...

[46]www.mah.gov.on.ca/Page9181.aspx

[47]www.ontario.ca/laws/statute/90c11

[48] www.children.gov.on.ca/htdocs/English/about/CFSA2014/index.aspx

[49] Métis Nation of Ontario Recommendations Concerning Métis-Specific Child and Family Services Submitted to the Minister of Children and Youth Services, March 30, 2012 at p.3.

[50] Children First: Aboriginal Advisor's report on the status of Aboriginal child welfare in Ontario, 2011, online: www.children.gov.on.ca/htdocs/english/documents/topics/aboriginal/child_...

[51] See "Ontario to reform aboriginal child welfare system," Toronto Star, January 17, 2013, online: www.thestar.com/news/canada/2013/01/17/ontario_to_reform_aboriginal_chil.... Also see, "Aboriginals represent 6% of Canada's child population, but account for 26% of the kids placed in out-of-home care", London Free Press, December 3, 2014, online: www.lfpress.com/2014/12/03/aboriginals-represent-6-of-canadas-child-popu....

[52] A number of parties have brought a related complaint to the Canadian Human Rights Tribunal alleging discrimination against Aboriginal Peoples in child and family services (See "Stacking the odds against First Nations families", Globe and Mail, October 20, 2014, online: www.theglobeandmail.com/globe-debate/stacking-the-odds-against-first-nat...). In its concluding observations on Canada's third and fourth periodic reports under the Convention on the Rights of the Child, the UN Committee responsible recommended that the state intensify its efforts to render culturally appropriate assistance to Aboriginal and African Canadian parents and legal guardians to enable them to fulfill their parental role and avoid separating children from their family environment (See = recommendations 54, 55 and 56 of the Committee's Concluding Observations on the combined third and fourth periodic report of Canada, 2012, CRC/C/CAN/CO/3-4, online: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?sy...).

[53] "Canada's Forgotten Children: Written Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada" by the African Canadian Legal Clinic, July 2012.

[54] The Toronto Star reports numbers it obtained "indicate that 41 per cent of the children and youth in the care of the Children's Aid Society of Toronto are black. Yet only 8.2 per cent of Toronto's population under the age of 18 is black. ... Other figures... indicate the overrepresentation is province wide." See Toronto Star, Dec. 11, 2014, "Why are so many black children in foster and group homes?" online: www.thestar.com/news/canada/2014/12/11/why_are_so_many_black_children_in...

[55]www.ohrc.on.ca/en/news_centre/ohrc-offers-recommendations-child-and-fami...

[56] The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life- threatening forms of violence, spousal homicides and disappearances (art. 5).

The Committee recommends that the State party:

a. Strengthen its efforts to eliminate violence against Aboriginal women in all its forms by implementing its legislation and reinforcing its preventive programmes and strategies of

protection, including the Shelter Enhancement Program, the Family Violence Prevention Program, the Policy Centre for Victim Issues and the Aboriginal Justice Strategy and the new National Police Support Centre for missing persons;

b. Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;
c. Conduct culturally-sensitive awareness-raising campaigns on this issue, including in affected communities and in consultation with them;
d. Consider adopting a national plan of action on Aboriginal gender-based violence;
e. Consult Aboriginal women and their organizations and support their participation in development, implementation and evaluation of measures taken to combat violence against them.

The Committee further recommends that the State party support existing databases and establish a national database on murdered and missing Aboriginal women and provide the Committee with statistical data and information on concrete results of its programmes and strategies.

[57]www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.htm

[58]*Ibid*: The majority of all female homicides are solved (close to 90%) and there is little difference in solve rates between Aboriginal and non-Aboriginal victims.

[59]www.rcmp-grc.gc.ca/pubs/abo-aut/mmaw-fada-eng.htm

[60] www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-558/pages/page.cfm?Lang=E&Geo=PR&Code=01&Table=1&Data=Count&Sex=3&Age=1&StartRec=1&Sort=2&Display=Page

[61]www.thestar.com/news/canada/2014/05/01/1000_native_women_murdered_missin...

[62] www.nwac.ca/wp-content/uploads/2015/05/2010_What_Their_Stories_Tell_Us_R...

[63] The Committee's inquiry and report were undertaken in accordance with article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Committee's Report CEDAW/C/OP.8/CAN/1 is available online: www.fafia-afai.org/wp-content/uploads/2015/03/CEDAW_C_OP-8_CAN_1_7643_E.pdf

[64] CEDAW Committee Report, *Ibid*, para.190. Also, para.203.

[65] CEDAW Committee Report, *Ibid*, para.216 C.vi

[66]www.trc.ca/websites/trcinstitution/File/2015/Exec_Summary_2015_06_25_web...

[67]http://cashra.ca/news/canadian-human-rights-agencies-call-for-action.html

[68]http://docs.files.ontario.ca/documents/4593/actionplan-itsneverokay.pdf

[69]*Ibid*, p.33. The Action Plan also states that In February 2015, Ontario's

Premier and related ministers attended the first National

Roundtable on Missing and Murdered Indigenous Women and Girls to participate in a discussion aimed at coordinating action to address and prevent violence against indigenous women and girls.

[70] The OHRC's current 2005 Policy and guidelines on racism and racial discrimination offers some strategies to avoid racial profiling; online: http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrim...

[71] www.ohrc.on.ca/en/news_centre/towards-new-ohrc-policy-racial-profiling

[72] www.ohrc.on.ca/en/news_centre/communities-colour-joining-indigenous-comm...

[73] In August 2012, the OHRC partnered with the TRC to present "Shared Perspectives, An Evening of Reconciliation" as part of the Planet IndigenUS Festival at Harbourfront Centre in Toronto. This evening featured TRC Chair Justice Murray Sinclair, performances by dancers and drummers from the Aboriginal and Black communities, and an authors' dialogue between writer-storytellers Itah Sadu and Richard Wagamese, moderated by broadcast journalist Shelagh Rogers. This event widened the reconciliation conversation between Indigenous communities and other racialized communities in Canada.

[74] www.ohrc.on.ca/en/news_centre/statement-ohrc-interim-chief-commissioner-...

[75] The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life- threatening forms of violence, spousal homicides and disappearances (art. 5).

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[76] See section 2.2 of the Policy, online: www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment-0

[77] See *Baylis-Flannery v. DeWilde*, 2003 HRTO 28

[78] The John Howard Society of Ontario's report, Help Wanted: Reducing Barriers for Ontario's Youth with Police Records (2014), found that young Ontarians from marginalized populations – Aboriginal

peoples, racialized/immigrant communities, individuals with mental illness and addictions or developmental disabilities, etc. – are more likely to come into contact with the police and justice system, and thus, have a police record, which in turn is one of the most significant barriers to employment and employability. The Canadian Civil Liberties Association's report, False Promises, hidden costs: The case for reframing employment and volunteer police record check practices in Canada (2014), raises similar concerns.

[79] www.ohrc.on.ca/en/human-rights-and-creed-research-and-consultation-report

[80] www.ohrc.on.ca/en/creed-case-law-review

[81] *Randhawa v. Tequila Bar and Grill Ltd*, 2008 AHRC 3 (CanLII)

[82] www.ohrc.on.ca/en/summary-human-rights-and-creed-survey-findings

[83] www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-h...

[84] A study conducted in Montreal also found that African-Canadians were overrepresented in police referrals to emergency psychiatric services. G. Eric Jarvis, *et al.* "The Role of Afro-Canadian Status in Police or Ambulance Referral to Emergency Psychiatric Services" (2005) 56:6 Psychiatric Services 705.

[85] Research from the US and the UK, and some from Canada, has supported that people of African or Caribbean descent, particularly men and people who are immigrants, are disproportionately likely to be represented in the mental health and forensic mental health system and diagnosed with psychosis or schizophrenia, although multiple contributing factors need to be considered. One report states, "there are no statistics available, but psychiatric forensic units in Southwestern Ontario (including CAMH), based on anecdotal information, seem to have a disproportionately high number of men of colour, including African-Canadian men." Pascale C. Annoual, Gilles Bibeau, Clem Marshall & Carlo Sterlin, *Enslavement, Colonialism, Racism, Identity and Mental Health: Developing a new service model for Canadians of African Descent. Phase I report* (Toronto: CAMH, 2007) online: Centre for Addiction and Mental Health www.camh.net/publications/resources_for_professionals/EACRIMH/eacrimh_re... 13; G. Eric Jarvis, *et al.* "High rates of psychosis for black inpatients in Padua and Montreal: Different Contexts, Similar Findings" (2011) 46 Soc. Psychiatri. Epidemiol. 247; Kwame McKenzie & K. Bhui, "Institutional Racism in Mental Health Care" (Mar 2007) 334 B.M.J.649.

[86] G. E. Jarvis, *Emergency Psychiatric Treatment of Immigrants with Psychosis*, (Master of Science in Psychiatry, Department of Psychiatry, McGill University, Faculty of Medicine, 2002) [unpublished] at 91; Amos Bennewith, *et al.* "Ethnicity and Coercion among Involuntarily Detained Psychiatric In-patients" (2010) 196 British J. of Psychiatry 75; Rachel Spector, "Is There Racial Bias in Clinicians' Perceptions of the Dangerousness of Psychiatric Patients? A Review of the Literature" (2001) 10:1 J. of Mental Health 5.

[87] National Council of Welfare, *First Nations, Métis and Inuit Children and Youth: Time to Act* 127 (Ottawa: Her Majesty the Queen in Right of Canada, 2007) at 64.

[88] Jeff Latimer & Laura Casey-Foss, *A One-Day Snapshot of Aboriginal Youth in Custody across Canada: Phase II*, (Ottawa: Department of Justice Canada, Youth Justice Research, February 2004) at iii.

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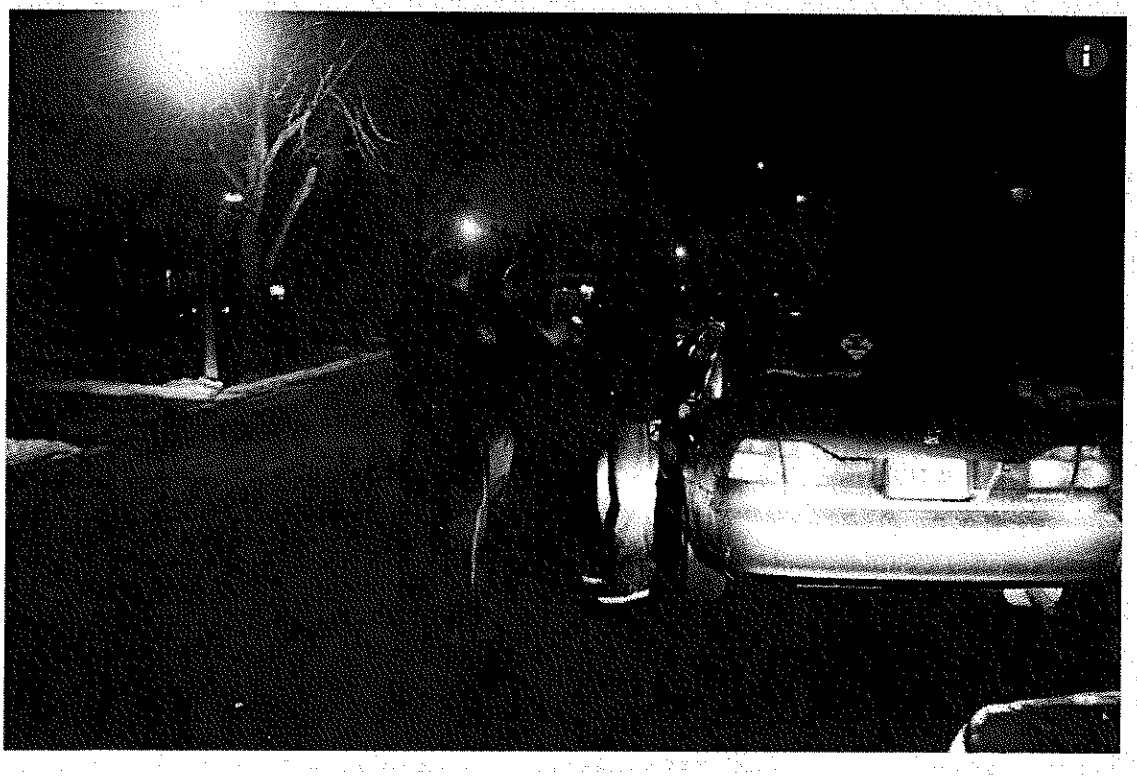
How Ontario politicians teamed up to rein in police carding: Cohn

By **Martin Regg Cohn** Provincial Politics
Tues., Nov. 3, 2015



In a province where politicians are afraid to stand up to the police, MPPs from all three parties can stand tall.

A controversy over carding has been festering in Ontario's big cities without anyone doing anything about it. Until now.

Too often, police have preyed on unsuspecting (though not suspicious) citizens of colour: Deploying pens and notebooks, backed by the power of their uniforms and weapons, police intimidated innocent people into answering their questions — without themselves answering to any higher authority.

Toronto's police oversight board was overruled when it tried to stop unlawful street checks. The mayors of Mississauga and Brampton were ignored by Peel's chief of police when they objected.

Provincial politicians are not usually top of mind when dealing with tensions in the inner cities or outer suburbs. But all three parties answered the call.

NDP deputy leader Jagmeet Singh launched a public campaign for change earlier this year, disclosing that he'd been carded more than 10 times by police — accosting him, questioning him, profiling him. A turban-wearing Sikh (which apparently arouses suspicions), Singh is a lawyer who now represents the riding of Bramalea-Gore-Malton — and knows his rights. But in news conferences, he made the case that most young people don't know they have a right to refuse police street checks unless they are under suspicion for a crime.

Leading a legislative debate last month, Singh exhorted his fellow MPPs to "send a clear message to the entire province that arbitrary and discriminatory carding and street checks are not acceptable."

The appeal from Singh's third-place New Democrats struck a chord with the Progressive Conservatives. As the official Opposition, they have hewed to a rigid law and order line ever since John Tory led the party from 2004-09 and cleaved to police unions (a pattern he continued after becoming Toronto's mayor last year).

The current PC leader, Patrick Brown, is taking a broader view. After reaching out to ethnic communities, notably people of South Asian descent, he is acutely aware that carding is seen as profiling. The PCs' new legal affairs critic, Randy Hillier — a rambunctious libertarian but also a civil libertarian — delivered a passionate critique of carding for infringing on fundamental freedoms.

"Societies that arbitrarily or unduly limit people's freedoms and liberties are also places where individual safety is in jeopardy," Hillier argued.

The governing Liberals were ready to respond. Community Safety Minister Yasir Naqvi announced that his party would support the opposition motion to ban discriminatory street checks.

"There is zero tolerance when it comes to any kind of racial profiling or discrimination in interactions that our police engage in," he announced.

Naqvi, who, like Singh, is a lawyer of South Asian descent, says he has never been carded. But after conducting consultations across the

province through the summer, he heard an earful about the practice — and learned about his own tin ear.

His ministry's initial consultation paper caused a storm for repeating the police claim, unquestioningly, that street checks are a "necessary and valuable tool." Naqvi was embarrassed into admitting that he'd never asked police to back up their assertions.

In the dog days of summer, it was starting to look as if the governing Liberals had bitten off more than they could chew — that what had first seemed like an easy win, politically, was now alienating both police and their critics. A public consultation in Toronto went awry, and the government's clumsiness conjured up memories of its mishandling of the G20 summit when police overstepped their powers (with Liberal connivance or ignorance).

Days after the legislature passed its unanimous, non-binding resolution, Naqvi released his own cabinet regulation to rein in carding. In essence, his ministry is reasserting its authority over police forces across Ontario that have resisted supervision until now.

Even the government's fiercest critics describe the draft regulations as a good start — unprecedented progress in a battle that has dragged on for decades. Going forward, people will be advised of their right to walk away from police questioning that is voluntary, told why they are being stopped, and provided with a receipt with the officer's badge number.

Undercover police will be exempt, and police with a valid purpose — defined as "detecting or preventing illegal activities" will still be able to ask questions while walking the beat. Police will be required to produce annual reports on voluntary stops so that any racial patterns can be discerned.

For the first time, police carding will be properly policed.

Just in time, provincial politicians figured out the politics.

Martin Regg Cohn's Ontario politics column appears Tuesday, Thursday and Sunday. mcohn@thestar.ca, Twitter: @reggcohn

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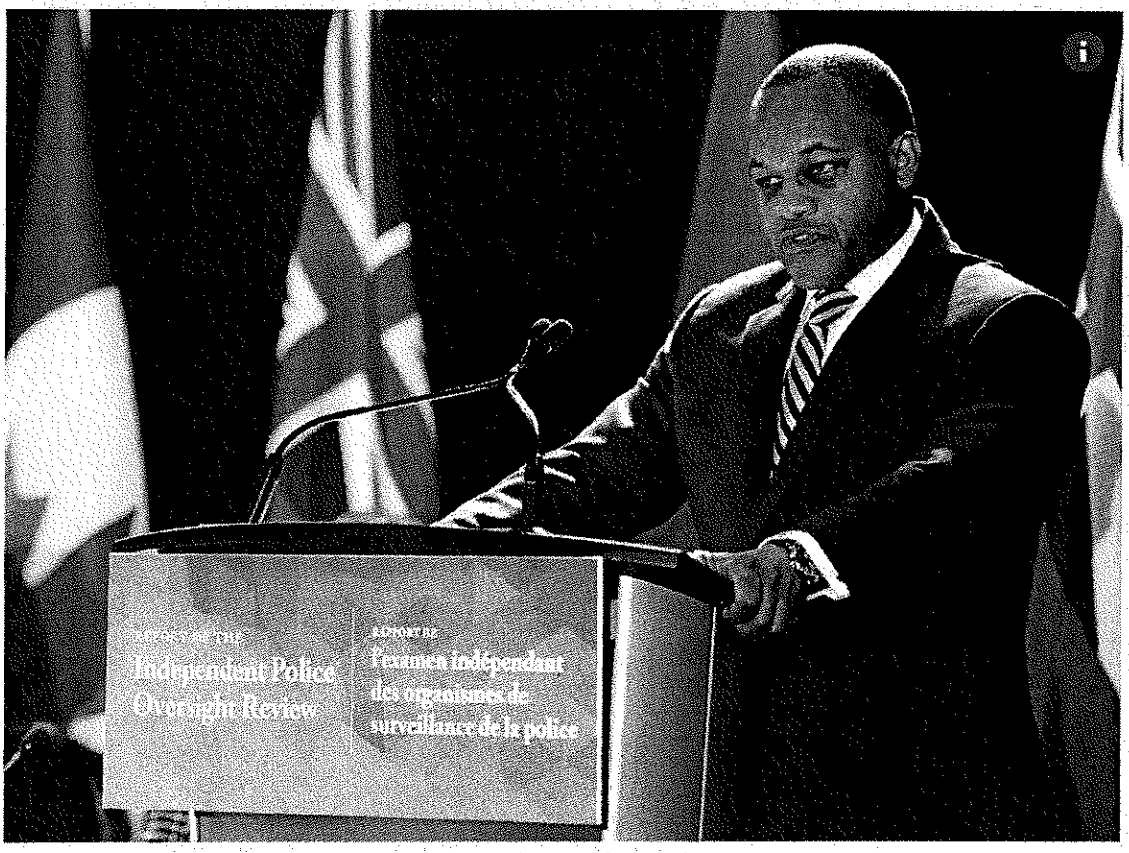
OPINION

Premier Ford can support 'the people' by ending police carding

By **Daniel Brown** Opinion
Thu., Jan. 3, 2019



To those with a taste for police procedurals, currently the longest running dramatic series is the episodic debate over random street checks and carding in Ontario.

It is a debate heavy with rhetoric from boosters who praise carding as being an invaluable investigative tool to help both deter and solve crime. It is equally laden with anguish from marginalized

ARTICLE CONTINUES BELOW

communities that have fallen victim to this ineffective act of institutionalized racism.

The twists and turns of the plot line have plagued front-line officers, civic leaders and provincial governments alike. Time and again, carding policies have been proposed to bridge the divide; then modified, trashed and replaced with a new iteration.

Into this quagmire of technicality and failure, Justice Michael Tulloch has stepped forward with a proposal that is daring, final and tremendously simple to implement: Get rid of the practice of carding, once and for all.

Released on New Year's Eve with little fanfare, Tulloch's report was commissioned by the previous Ontario government to review a new regulation it had introduced in early 2017 aimed at reducing the practice of police carding.

Read more:

Opinion | Edward Keenan: Random police carding doesn't work. Let's hope that fact finally ends the debate

Address racial bias in policing to stop carding, advocates say

Police carding should be banned in Ontario, independent review says

In his response, Tulloch takes pains to differentiate legitimate "street check" investigations from random carding. In the latter, police have no suspicion that the person they are questioning may have been involved in any crime. Instead, acting on a hunch, or for no reason at all, officers simply fish for information they can enter in police databases for future reference.

Tulloch's report echoes previous findings by criminologists and successive Toronto Star investigations that carding is prone to abuse and lacking in effectiveness. Rather than decreasing crime, it deters members of marginalized communities from seeking the help of police or coming forward to help solve crimes.

The ills of carding dramatically outweigh its dubious benefits. It disproportionately targets racialized groups. In focusing primarily on Black, brown and Indigenous men, it conveys a message that they are predisposed to commit crimes solely on account of their racial origin. Hundreds of thousands of individuals have been stopped and documented in this manner simply because they struck a passing police officer as appearing *suspicious*.

The practice has left many racialized Ontarians feeling resigned, oppressed and dispirited. Others harbour a smouldering resentment and distrust of police. The final indignity is that there is no mechanism for having this information removed or nullified from police databases.

Police unions and other supporters of carding counter with a theory that, without having it as a policing tool, a current rise in gun crime and the homicide rate would continue. However, this theory is based not on empirical research, but on unsubstantiated conventional wisdom and gut instinct.

How refreshing it would be if police unions and the tabloid press were — just this once — to champion more sophisticated notions of crime prevention, such as enhanced education, job creation and community programs for at-risk youth.

We have potentially arrived at a watershed moment. Tulloch, a top appellate court judge and one-time Crown prosecutor with roots of his own in the Black community, exudes credibility. He has consulted widely with police, cultural organizations and individuals affected by carding.

So, what fate awaits his report? Will the province heed his urging to bring more clarity to the information police can collect; to enhance training for officers and to impose disciplinary consequences for those who persistently breach strict regulations governing carding and street checks?

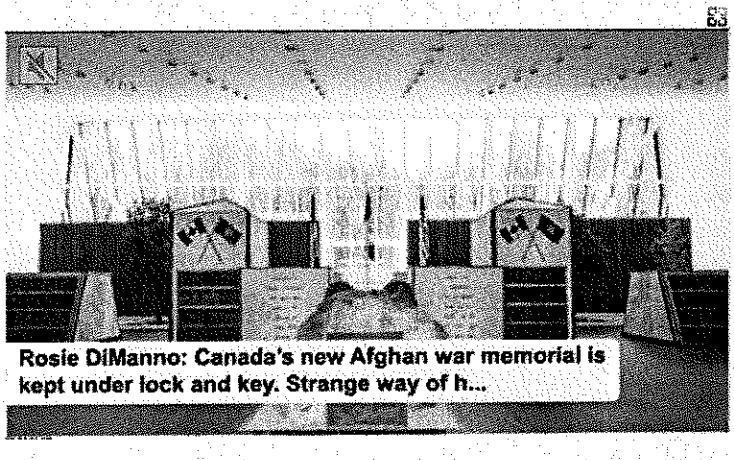
To be sure, it can only irk Premier Ford that Tulloch's report was commissioned by the former Liberal government he so detests. It is also discouraging to recall that recommendations from a previous review Tulloch held into reshaping police oversight in Ontario have disappeared into a sea of indifference.

At the same time, the premier hails from a region where carding and racial profiling are an undeniable blot on policing. Ford has made much of his purported friendship with the Black community. Here is his chance to prove that this claim is more than hot air.

If Ford intends to be known by his self-proclaimed moniker — the "people's premier" — he should implement Tulloch's recommendations as the final episode in this dreary, long-running drama.

Daniel Brown is a Toronto-based criminal defence lawyer and a vice president of the Criminal Lawyers' Association. Follow him on Twitter: @danielbrownlaw

Read more about: Doug Ford



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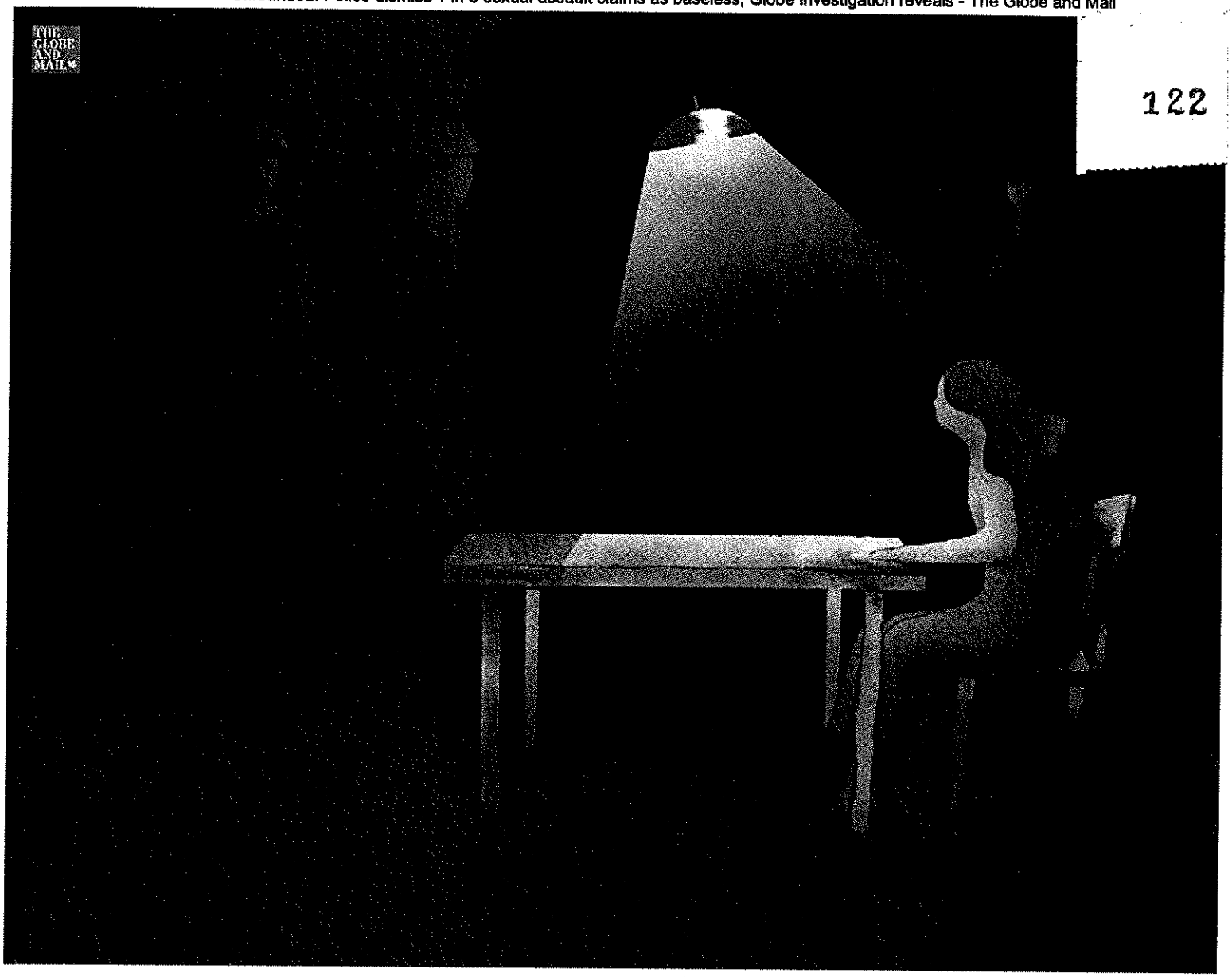
TAB D

This is Exhibit D to the Affidavit
of Brian Beamish
sworn this 23 day of May 2019

A Commissioner etc.



UNFOUNDED

WHY POLICE DISMISS 1 IN 5 SEXUAL ASSAULT CLAIMS AS BASELESS

In a 20-month-long investigation into how police handle sexual assault allegations, The Globe and Mail gathered data from more than 870 police forces. The findings expose deep flaws at every step of the process

BY **ROBYN DOOLITTLE** LONDON, ONT.
PUBLISHED FRIDAY, FEBRUARY 3, 2017

The keg party was a 10-minute walk from Ava's new home at Delaware Hall residence, just north of Western University's soaring stone gates. It was the Friday after Thanksgiving and, word had it, the organizers had already sold more than 200 tickets.

She had been looking forward to it all week. Her first big bash as a university student.

Ava left the dorm with her friends around 10:15 p.m., already feeling a bit tipsy from the drinks they had had while getting ready.

She didn't much care for the taste of beer, so the 18-year-old brought her own drink in a large plastic bottle that had a straw fixed to the lid: 10 shots of vodka mixed with diet lemonade.

Like many of the neighbouring properties, the vast, nearly century-old home had been converted into student housing. The party washed over every floor and spilled onto the lawn, which was littered with red plastic cups. Someone handed Ava a beer, which she accepted but then quietly set aside, preferring to sip what she had brought. She and her friends watched drinking games: flip cup, then beer pong. As the night went on, things became more and more fuzzy.

UNFOUNDED: A Globe investigation into how police handle sexual assault allegations

Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless, Globe investigation reveals

Will police believe you? Compare unfounded sex assault rates across Canada

How do you fix a broken system?

Inside North Bay's struggle to change how they handle sexual assault cases

The challenge of handling sex assault in Canada's North

Too drunk to consent? How alcohol complicates sex-assault cases

What it's like to report a sexual assault: 36 people share their stories

How police forces co-ordinated one response to The Globe's queries

How police missteps can derail sex-assault cases

Ava remembers being outside with her friends, then leaving to find the washroom inside. With her near-empty drink in hand, she stumbled off alone. Somewhere along the line, she isn't sure when, she found herself talking to a guy from the party. He looked to be a few years older than her, with dark, messy hair and a slim build. She remembers they were outside and kissing. And then she blacked out.

When things came back into focus, Ava says, she was on the ground near a pine tree, at the north side of the house. She was naked and cold and lying in the dirt. The man was inside of her.

"You're hurting me. Stop," she remembers telling him. She had had sex only once before.

"I don't want to hurt you, baby," he said. But he did not stop.

Ava struggled to concentrate and stay conscious.

"No. Stop," she said, again. Again, he ignored her.

"I blacked out, and then I came to my senses, and then I remember saying no, you're hurting me, no."

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– AVA TELLS AN OFFICER IN HER TAPED POLICE INTERVIEW.

Galit Rodan/The Globe and Mail

Terror shot through Ava's body. In that moment, she realized the man hadn't simply misunderstood her. He wasn't playing around. He was raping her. No one could hear her call for help. She had no idea what to do. She wondered if he would kill her when it was over. She stopped fighting and went still.

Suddenly, there was a flash. Ava looked over and saw four or five men pointing cellphone cameras in her direction. She became frantic. The man on top of her ran away. He left his wallet behind, police later told Ava. She was left naked and curled on the ground, her back and hair covered in dirt. Two women who heard her sobbing found Ava shortly after.

It was Oct. 16, 2010, more than five years before an eerily similar attack at Stanford University would make international headlines. Ava's story, however, never made the news. Her case did not go to court. Her assailant was never arrested, never charged.

In fact, the London Police Service detective concluded that what happened to Ava that night was not a crime.

There are many ways to shut a case without laying a charge. Not enough evidence? There's a closure code for that. Complainant doesn't want to

proceed with charges? There's a code for that, too.

On Nov. 13, 2010, the detective closed Ava's file as "unfounded," another formal police classification that rendered her allegations baseless.

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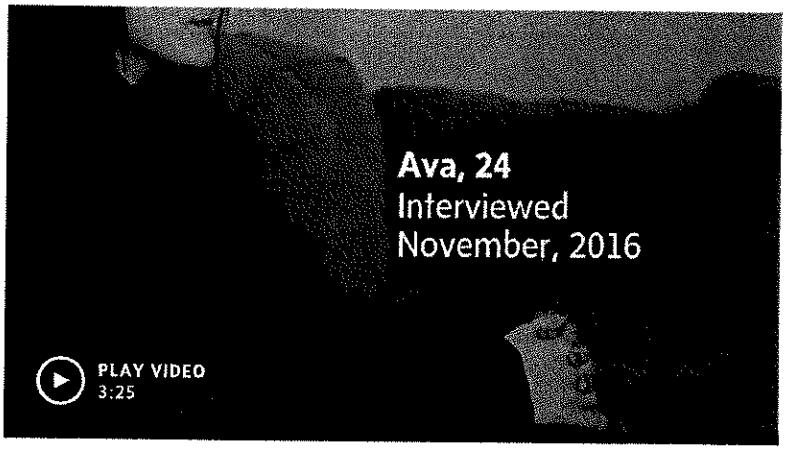
It meant a crime was neither attempted, nor occurred. It did not immediately brand Ava a liar, necessarily. But it meant she was not raped.

According to police records, the suspect was given a warning.

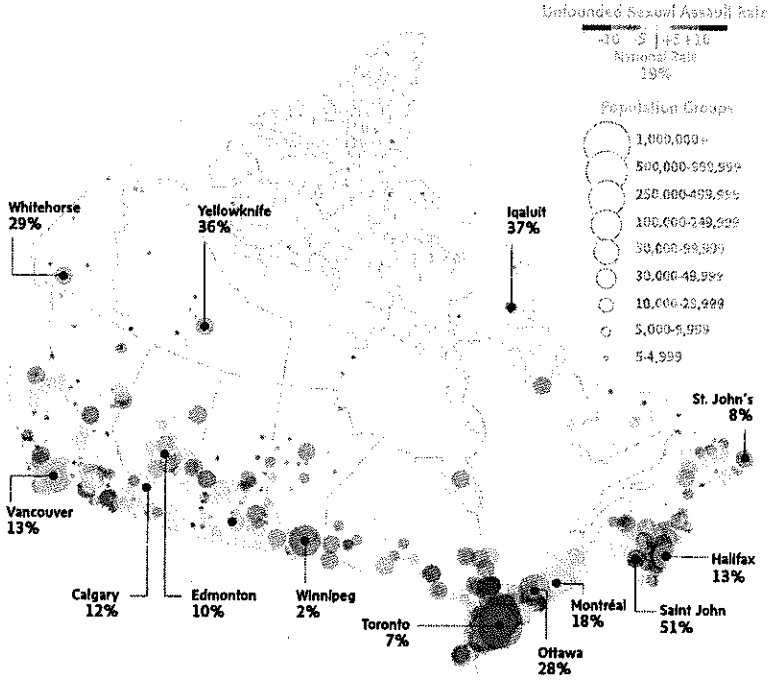
Ava recounts her sexual assault allegation



Reporting and production by Robyn Doolittle; Video and editing by Melissa Tait; Additional production by Laura Blenkinsop and Timothy Moore

Ava's case is not an outlier. Her complaint is among the more than 5,000 allegations of sexual assault closed as unfounded by Canadian law enforcement every year, according to a Globe and Mail investigation into the authorities' handling of sexual-assault cases. Rape, the most serious of those, is a crime so injurious to victims that the judiciary considers it second only to murder in severity.

National policing data, compiled and reviewed by The Globe as part of its 20-month investigation, reveal that one of every five sexual-assault allegations in Canada is dismissed as baseless and thus unfounded. The result is a national unfounded rate of 19.39 per cent – nearly twice as high as it is for physical assault (10.84 per cent), and dramatically higher than that of other types of crime.



WILL THEY BELIEVE YOU?

Look up the rates for the police service in your area

FIND YOUR POLICE JURISDICTION

True unfounded cases, which arise from malicious or mistaken reports, are rare. Between 2 per cent and 8 per cent of complaints are false reports, according to research from North America, the United Kingdom and Australia. The Globe's findings suggest that police in Canada are closing a disproportionate number of rape cases as unfounded, a phenomenon that distorts the country's crime statistics.

Inflated unfounded rates create the impression that police receive fewer complaints of sexual assault than they actually do. In turn, that gives the appearance that more complaints lead to an arrest.

According to The Globe's data, 42 per cent of sex-assault complaints lead to a charge (Statistics Canada, which has data from all jurisdictions, reports 44 per cent). When unfounded cases are factored in as complaints, however, the charge rate drops to 34 per cent.

In addition, The Globe's data show vast discrepancies in unfounded rates between jurisdictions across Canada – inexplicable swings from city to city, province to province, regardless of size and demographics – which suggest that complainants of sex assault in some parts of the country are far less likely to be believed than in other parts.

While some cities, such as Toronto, Winnipeg, Surrey and Windsor, have single-digit unfounded rates, The Globe found that police in 115 communities dismiss at least one-third of sex-assault complaints as unfounded.

Toronto, ON
TORONTO POLICE SERVICE
Policed Population: 2,804,604

Unfounded sexual assault 5-year rate
7%
772 of 11,046 allegations

But the significance of inaccurate unfounded rates is more than statistical, according to advocates, complainants and scholars who reviewed The Globe's data, which is the most comprehensive review of sexual-assault unfounded rates ever conducted in Canada.

When complaints of sexual assault are dismissed with such frequency, it is a sign of deeper flaws in the investigative process: inadequate training for police; dated interviewing techniques that do not take into account the effect that trauma can have on memory; and the persistence of rape myths among law-enforcement officials.

"What does unfounded mean to you? What does unfounded mean to anybody? It means 'You're lying,'." says Ottawa criminologist Holly Johnson, who has extensively studied that city's unfounded cases. She believes that high rates send a message that police don't believe large numbers of complainants, "which reinforces damaging myths that women lie about sexual victimization, and could act as a deterrent to already low reporting."

To conduct its review, The Globe and Mail requested unfounded data from every police service in the country, which covers more than 1,100 jurisdictions. Though not all forces complied with the request, The Globe received data from 873 police jurisdictions, which represent 92 per cent of the population.

(*How police and politicians have responded to The Globe's investigation so far*)

In addition to the unfounded data, The Globe interviewed 54 complainants from across the country about their experience reporting a sexual assault to police, in order to understand how their cases were handled. For the majority of cases, The Globe was able to obtain documentation, such as police notes and e-mails, medical records, court documents, video and audio interviews, and internal police professional-standards reports. In cases where no documents were available, The Globe interviewed police, parents, friends and witnesses to verify the complainants' accounts.

In all but 15 cases, those files were dismissed without charges. While complainants are rarely, if ever, told whether their allegation has been deemed unfounded, The Globe obtained documents that showed that

seven of the 54 cases had been closed as unfounded. At least four other cases were likely closed in that way: Two complainants were charged with public mischief for filing a false report (in both instances, the charges were dropped before going to court); another two women said they were threatened with public mischief after making allegations of sexual assault.

Because unfounded statistics are kept secret – except through individual and often costly freedom-of-information requests – there is no imperative for police to analyze or account for them.

It wasn't always this way. Until 2003, Statistics Canada released unfounded numbers. The last year for which numbers are available is 2002, when the national unfounded rate for sexual offences was 16 per cent. The agency collects data through the Uniform Crime Reporting Survey, a national set of standards that every police service is supposed to follow. The definition of unfounded, along with all other clearance codes, is laid out explicitly in the UCRS protocols.

But after Statistics Canada raised concerns that police services weren't using the category consistently – for instance, misclassifying as unfounded cases that simply did not have enough evidence to lay a charge; or, more seriously, not recording unfounded cases at all – Statistics Canada decided to stop collecting the data altogether, rather than force police to follow the rules.

The 1980s and 1990s were watershed decades for sexual-assault legislation and jurisprudence in Canada. The crimes of rape and indecent assault were replaced with three tiers of sexual-assault offences, encompassing a fuller spectrum of sexual violence. Restrictions were put on the circumstances in which a victim's sexual history could be introduced in court. The corroboration requirement was removed, meaning that a complainant's word, even without third-party testimony or physical evidence, became enough to secure a conviction. And restrictions were put on a suspect's ability to claim that he had "mistakenly believed" a complainant had consented to sexual activity. Alongside other changes, these decades gave Canada some of the most progressive sexual-assault laws in the world, in theory.

The handling of sexual assault has again become the subject of a vigorous public debate: The spectacle of Jian Ghomeshi's sex-assault trial; the unprecedented public disciplining of an Alberta judge who questioned why a woman didn't "keep your knees together" to prevent an attack; the cases of Bill Cosby and of Brock Turner, the Stanford student who was convicted of sexually assaulting a 23-year-old woman who lay unconscious on the ground.

And although discussion is often focused on the fact that fewer than one in 10 victims report their assault to police, and that fewer than half of the

cases that do go to court end with a conviction – among the lowest conviction rates of any type of violent crime – The Globe's reporting has shown there is an equally pressing statistic that has yet to enter the debate in Canada.

Every year, an average of 5,500 people are reporting sexual violence to Canadian police, but their cases are dropping out of the system as unfounded long before a Crown prosecutor, judge or jury has a chance to weigh in.

The result is a game of chance for Canadian sex-assault complainants, whose odds of justice are determined not only by the facts of their case, but by where the crime took place, which police force picks up their file, and what officer shows up at their door.

"Going into it, I felt like I trusted the police," says Ava, who is now studying law and told her story on the condition she is only identified by her first name. "I had no reason not to trust the process."

Looking back, she describes an abrupt loss of faith.

"I started to put it together that I wasn't necessarily being believed," she says. "It was like the floor opened up underneath me. I felt like I was sinking."

'A COMPLETE LOTTERY'

London is a university and college town of about 390,000 people in Southwestern Ontario. Split between Western University and Fanshawe College, roughly 43,000 full-time students call the city home, giving it a hard-partying reputation.

For the London Police Service, that reputation is more than a headache. The force has publicly complained about the rowdy parties, incidents of vandalism, and nuisance infractions in student neighbourhoods.

But the demographics and heavy drinking have another consequence for the city.

Victimization studies have shown that, across Canada, specific groups of young women have the highest rates of sexual assault – including students, single women, those who live in urban areas, and females between the ages of 15 and 24. When Ava moved to London, she ticked every one of those boxes. And while no one knows exactly how many sexual assaults involve alcohol (more than 90 per cent of incidents are never reported) research has suggested that half of all victims and perpetrators had been drinking beforehand.

With its large student population and party culture, London has all the hallmarks of a community where young women are at risk of sexual violence.

And yet, the extent of that problem has been obscured, because the London Police Service has one of the highest unfounded rates among Canadian cities. In 2014, the service dismissed about a third of all sexual-assault allegations in this way, meaning that on the books, there were 259 complaints in the city that year; in fact, there were 390.

Over the five-year period reviewed, London presented one of the highest unfounded rates of the 25 largest police communities in the country. The Globe found that the service dropped 30 per cent of sexual-assault allegations as unfounded between 2010 and 2014. (Unless stated otherwise, all unfounded percentages in this story refer to a community's five-year rate.)

London, ON

LONDON POLICE SERVICE

Policed Population: 388,883

Unfounded sexual assault 5-year rate

30%

690 of 2,278 allegations

Among Canada's largest cities, there were drastic variations in unfounded rates. Five Southern Ontario cities, including London, posted the highest figures, with unfounded rates ranging from 28 per cent to 31 per cent. The numbers might have suggested a pattern – that Ontario police services are more likely than others to rule cases as unfounded – except that some of the lowest unfounded rates were also in that province: Windsor, with 3 per cent; and Toronto, with 7 per cent.

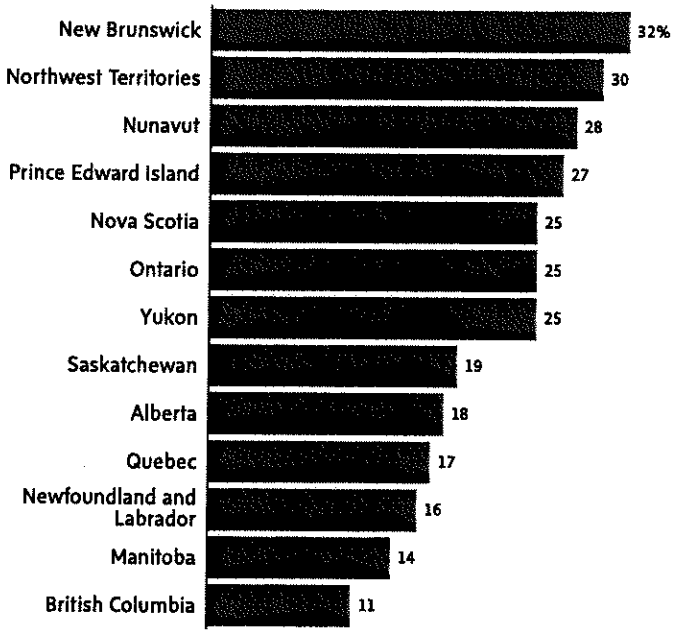
"I think in general you're going to be much better off with a large city, with a large police agency, but it is a complete lottery. I think that that's very clear," says Lise Gotell, a professor at the University of Alberta who specializes in feminist legal theory. "If you're seeing judges misapplying the consent standard, I think there are a great many police officers as first responders who simply don't know the first thing about what the consent laws are."

Western provinces fared better than the rest of the country. British Columbia (11 per cent) posted the lowest rate. Manitoba came in at 14 per cent, Alberta at 18 per cent, and Saskatchewan at 19 per cent. (Newfoundland and Labrador, with 16 per cent, and Quebec, at 17 per cent, were also below the national rate.)

The Globe found that every other province and territory is dismissing at least a quarter of all sexual-assault complaints as unfounded: New Brunswick (32 per cent), the Northwest Territories (30 per cent), Nunavut (28 per cent), Prince Edward Island (27 per cent), Yukon (25 per cent), and Nova Scotia and Ontario (both 25 per cent).

Unfounded sexual assault rate by province and territory

Percentage of sexual assault allegations cleared as unfounded (2010-2014)



THE GLOBE AND MAIL

The national rate covers 89 per cent of Canada's population. The percentage of the population covered in each province is as follows. N.B. 95%, N.W.T 100%, Nunavut 100%, P.E.I 73%, N.S. 99%, Ont. 99%, Yukon 100%, Sask. 97%, Alta. 66%, Que. 73%, Nfld. 100%, Man.

But regardless of whether a province happened to post a high or low rate, each showed wide swings on the ground.

Manitoba had the second-lowest provincial rate, and Winnipeg police unfounded only 2 per cent of allegations. (Police and other experts who deal with the issue routinely use "unfound" as a verb.) But two hours west of the capital, in Brandon, the rate stood at 18 per cent. These types of discrepancies were visible again and again across the country in small towns and in cities.

Winnipeg, MB
WINNIPEG POLICE SERVICE
Policed Population: 709,171
Unfounded sexual assault 5-year rate
2%
66 of 3,483 allegations

In Vermilion, the RCMP's unfounded rate was 17 per cent. Two and a half hours away, in Westlock, the RCMP's numbers stood at 29 per cent. Both police jurisdictions are of comparable size, 10,000 and 13,900, respectively.

Vermilion, AB
ROYAL CANADIAN MOUNTED POLICE
Policed Population: 9,972
Unfounded sexual assault 5-year rate
17%
12 of 72 allegations

In New Brunswick, the Saint John Police Force recorded an unfounded rate of 51 per cent; but in Fredericton, the rate was just 16 per cent. The cities are about the same size: 70,000 in Saint John, 59,000 in Fredericton.

Saint John, NB
SAINT JOHN POLICE FORCE

Policed Population: 69,780

Unfounded sexual assault 5-year rate

51%

312 of 617 allegations

Blair Crew, a lawyer and part-time University of Ottawa law professor who has studied the unfounded issue, reviewed The Globe's findings. He says that, when viewed nationally, such fluctuations point to the conclusion that victims are more likely to be believed in some areas of the country than in others.

"In some of the smaller jurisdictions, one or two more cases going one way or the other may make a very radical difference," he says.

But there is "no reason in principle" for sizeable discrepancies between large urban jurisdictions, such as Toronto and York Region. The two jurisdictions border each other and both have more than a million residents. Yet York's unfounded rate was 31 per cent, which is more than four times higher than Toronto's.

York Region (Markham / Vaughan), ON

YORK REGIONAL POLICE

Policed Population: 1,122,803

Unfounded sexual assault 5-year rate

31%

646 of 2,058 allegations

The only explanation, Mr. Crew contends, is different police practices.

Mr. Crew is one of only a few Canadian researchers to collect unfounded rates since police stopped making them public. Through freedom-of-information requests, he and researcher Teresa DuBois obtained statistics from seven Ontario police services spanning the period 2003 to 2007. Their research, like that of The Globe's, found large disparities between the lowest (Windsor, at 2 per cent) and the highest (London, at 34 per cent). Put another way: The Windsor Police Service dismissed one of every 50 sexual-assault allegations as unfounded. London dropped one in three.

How to explain those variations, and the high rates within some police services? We put that question to more than a dozen police officers involved in sexual-assault investigations across the country. They told The Globe that it is likely that some cases are being improperly coded as unfounded. (Several police departments – including London's – have said that, as a result of The Globe's inquiries, they have launched reviews into how their officers are using the classification.) In 2002, Statistics Canada also heard concerns that police were misclassifying cases, as did criminologist Julian Roberts in the late 1980s when he was hired by the federal Department of Justice to look into high rates of unfounded sexual assault.

"It doesn't make any sense," says Mr. Roberts, a criminology professor at the University of Oxford. "Why are we getting [coding] errors at a differential rate for sexual assault compared to other offences?"

In the late 1980s, when he was conducting research, the national unfounded rate for sexual assault in Canada stood at 15 per cent – compared to 7 per cent for physical assault. (In The Globe's findings, the rate for each has since gone up, but the ratio between the two remains the same.)

"If anything, you'd expect the sexual-assault unfounded rate to be lower than physical assault [because] … coming forward to police to report a sexual assault is not an easy thing," he says. "Generally what you find with criminal offences is the more serious offences have a lower unfounded rate."

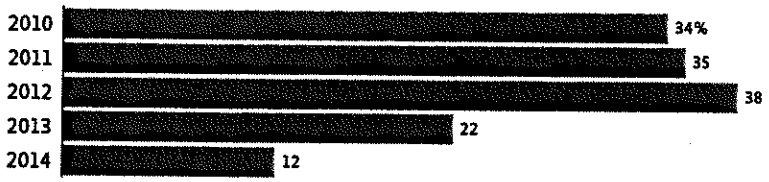
One interesting trend in the data reviewed by The Globe: Those police services that have had to deal with negative media coverage or increased scrutiny of the issue in the past happen to have lower rates.

Of particular note is the City of Ottawa, which has been ground zero in the battle over high unfounded rates in recent years, owing to the fact that the leading voices on the issue – including Mr. Crew and criminologist Holly Johnson – live there.

In 2012, 38 per cent of sexual assault cases in Ottawa were closed as unfounded. Two years of criticism later, that number plummeted to 12 per cent, The Globe's analysis showed.

Unfounded sexual assault rate for Ottawa police service

Percentage of sexual assault allegations cleared as unfounded (2010-2014)



Staff Sgt. Angela McDade, who this week retired as head of the service's sexual assault and child abuse section, told The Globe that there was not previously a clear understanding of when to classify a case as unfounded. If a complainant decided that she didn't want to proceed with an investigation, or if she refused to co-operate, the allegation was typically classified as unfounded.

She says that, about four years ago, advocates in the Ottawa community brought the issue to their attention. In response, the Ottawa Police Service implemented new training around the use of the unfounded designation, along with better oversight to catch mistakes. The numbers have been dropping ever since, she says. "The supervisors are reviewing the cases as they're submitted. Plus, there's the education to the officers

saying, 'You know what, you cannot clear as unfounded unless you're certain that no violation of the law took place.' That's why you have such a drastic change in our statistics. ... We've come a long way over the last few years."

The most noteworthy example of how public scrutiny can reshape a department's approach to sexual-assault complaints is the Toronto Police Service.

In 1998, a woman known only as Jane Doe won a landmark court decision against the service, more than a decade after she had been raped in the middle of the night by a serial predator. Justice Jean MacFarland concluded that police had failed to warn her about the "Balcony Rapist" – who had attacked four other women in her neighbourhood over the previous year – and that the service's sexual-assault practices discriminated against women. (When Jane Doe asked the police why she hadn't been alerted to the threat, she was told that women would become "hysterical" and the rapist would flee the area.)

"Although the [police] say they took the crime of sexual assault seriously in 1985-86, I must conclude, on the evidence before me, that they did not," Justice MacFarland said in her ruling.

Immediately after, Toronto city council ordered a review of how its police service handled sexual-assault cases. City auditor Jeffrey Griffiths's 137-page report included 57 recommendations. Among them: better training, investigative protocols and supervisory oversight; and a new rule that "Under no circumstances should a first-response officer make a determination as to whether a sexual-assault incident is classified as unfounded."

A follow-up report published in 2004 found that, while not all the recommendations had been implemented, meaningful progress had been made.

The nearly two-decade saga made national headlines and put a spotlight on shoddy sexual-assault police policies in a way that no story had before. But even at the peak of the scandal, outside of Toronto, it seemed to be business as usual.

THE INTERVIEW

It is 10:18 a.m. on March 30, 1999, at the Ottawa Police headquarters – the year after the Jane Doe judgment.

L is slouched over on a couch, staring sheepishly at the floor with her arms tightly crossed as the sergeant introduces himself.

A screen grab from L's police interview video.

"I'd like to sit down and talk to you about certain allegations you made," the officer says. "Why are you here?"

"Because I. Just …" – the 14-year-old giggles – "I'm sorry. I'm nervous."

"Take your time."

"Okay, I'm here because, um, I don't know how to put it."

"Put it the best way you can, okay?" the officer says.

"Because, I, arghhhh! Okay, I'm here because I was, um" – she laughs again – "can you help me?" L says to a support worker from the Children's Aid Society who had been assigned to sit in on the questioning. The support worker shrugs and tells L to say what is on her mind.

L takes a breath: "I had sex with [B]. That's what comes to my mind right now." (Both B and L are initials.)

B was a family friend in his late 20s, she continues. When L was 13, her mother had asked B to look after L while the mother was out of town. That's when the "stuff" happened, L tells the sergeant.

"I want you to tell me exactly where he touched you," he says. "What 'stuff' was involved?"

L shifts uncomfortably in her seat. He reeked of beer, she says. He started by telling her she was sexy. He stroked her leg, told her it would be okay, then took off her pyjama bottoms.

When it was over, B warned L to "shut up about this," she says.

Nine months later, L says, she gave birth to a baby. The child was put up for adoption. She explains that she didn't realize she was pregnant until "it started to kick." L had noticed her stomach getting bigger, but "thought it would go away," she tells the sergeant.

The sergeant ends the interview 21 minutes and 40 seconds after it began.

Months later, L recently told The Globe (she didn't want her named published), police told her mother that the case had been unfounded, a word that was foreign to L. The officer told her mother that it was suspicious that L had giggled during their interview, and that B, in any case, told police he was sterile. (L's mother, who was going through personal struggles at the time, says she does not remember the specifics of the conversation – only that the officer told her that B had "lawyered up" and there was "nothing he could do.")

Years later, L requested a copy of the case records.

The only things in the file were a general occurrence report, a copy of the support worker's memo – which stated simply that L "disclosed that she was having sexual relations with the suspect who is 27 years old" – and L's video statement. There was no evidence that investigators had asked B to prove he was sterile; no evidence that attempts had been made to test the baby's DNA; and, in fact, no evidence that anyone at the Ottawa Police Service had done any work to try to figure out how a Grade 8 student had become pregnant, beyond interviewing L herself.

Jamie Dunlop, an Ottawa police inspector who oversees major investigations such as sex crimes and homicides, said cases are handled differently now.

"You're using today's knowledge of what we do and how we do business, and you want to apply it back 20 years. You're going to find mistakes," Insp. Dunlop said, referring to techniques in general and not specifically about L's case.

"There's a lot of changes that have happened ... in sexual assaults and understanding trauma-based interviews," he said. "Laughter is common. Absolutely right. Was that as well known 20 years ago? I don't know. We're doing a much better job now of preparing investigators."

In November, 2015, L – now 32 and a recent university graduate – won a decision with Ontario's Criminal Injuries Compensation Board, which can give financial awards to victims of violent crime. The board applies the

same legal test that civil proceedings do: Adjudicators make decisions based on a "balance of probabilities," rather than the higher "beyond a reasonable doubt" test used in criminal courts.

Both B and L were interviewed by the board. Each was encouraged to bring any documents that would support their case. The evidence presented during L's hearing is protected under a publication ban. But in issuing its decision, the board stated that it had found her to be "clear, forthright and credible," while B came off as "vague and inconsistent." L was awarded $28,000, a little more than the typical maximum.

L's experience is evidence of many of the problems that advocates and experts have identified with how sexual-assault investigations are handled. Those include: the short interview by police; the confusion around victim behaviour – trauma specialists note that laughter, for example, is not an uncommon symptom of nervousness, especially in the case of a young girl talking to a male officer about sexual acts, and the lack of documentation in the investigative file.

"If there isn't a proper investigation, then it's easy to unfound. And it's really hard for a woman to go further with it, because no one has done the investigative work," says Elizabeth Sheehy, a legal scholar at the University of Ottawa.

Trying to prove definitively if – and why – allegations are improperly dropping out of the system is impossible. In contrast to the situation in the United States, police files in Canada are not publicly available, even under freedom-of-information laws. South of the border, unfounded statistics are available through the FBI without an access-to-information request.

Nicole Xu/The Globe and Mail

Last August, the U.S. Department of Justice released an incendiary report into the Baltimore Police Department, criticizing, among other things, the service's approach to sexual assault and its handling of unfounded cases.

News outlets followed up the DOJ report with investigative stories about other communities' high unfounded rates, using the publicly available statistics. Journalists from BuzzFeed were able to obtain individual police files connected to unfounded cases – files far more detailed than those that actual sex-assault victims in Canada have access to – to take the story beyond the numbers, and show what was going wrong on the ground.

In Canada, that's not possible. Only complainants are able to access some documents connected to an allegation through freedom-of-information requests, with a fee; although, in the cases reviewed by The Globe, anything not directly related to the victim – such as witness statements, information provided by the suspect, and notes about investigative steps – was typically redacted. One B.C. woman was denied a copy of her video statement due to privacy concerns. She and the investigating officer had been the only people in the room.

"I couldn't believe it," says Christine Sandhu, who reported a rape to the Vancouver Police Department in 2015. "It's not like I forgot who raped me and wanted a refresher."

Ms. Sandhu is one of the 54 people from across the country whom The Globe interviewed about their experience reporting sexual violence to police. Only one of those individuals – L – was actually informed that their case had been closed as unfounded. Others learned this after the fact, either by obtaining copies of their file or through inquiries by The Globe. Of the 54 cases, 39 were closed before making it to court.

One involves a second-year Laurentian University student named Emilie, who asked to be identified only by her first name. In January, 2015, Emilie told the Greater Sudbury Police Service that she had been raped at a campus residence on Halloween night while she was heavily intoxicated. After a four-week investigation, the sergeant handling the case closed the file as unfounded after the two men said the sex was consensual.

Emilie was not told that police had unfounded her allegation; rather, she learned it from The Globe.

"The last two years of my life have been hell. To have a whole two years of hating to wake up in the morning and go to class, and to have them say that my complaint isn't valid? It's wrong," she says. "It's bullshit. It's not right."

WARNINGS IGNORED

To better understand why a case may end up being unfounded, The Globe and Mail requested copies of detailed unfounded files, excluding any identifying information, from Canada's 25 largest police jurisdictions over a four-month period in 2013 (long enough ago that the investigations would be closed).

Five police services – the RCMP's Surrey and Burnaby detachments in B.C.; and London, Windsor and Waterloo, Ont. – responded with redacted

synopses, in some instances leaving only a few words visible in a given report (and citing reasons of privacy for doing so). Only Windsor's and Waterloo's documents were left in a readable form.

Parts of the responses from Waterloo, London and Windsor, Ont. to The Globe's request for unfounded files.

Without access to investigative files, those who challenge the police community's insistence that sex-assault investigations are being done properly are left relying on anecdotal evidence and statistics that tell only part of the story.

Linda Light, a former senior policy analyst in B.C.'s justice department, is one of the only civilian researchers to gain full access to Canadian sexual-assault police files.

Funded in part by the federal Department of Justice and the B.C. ministries of community services and public safety, Ms. Light and Gisela Ruebsaat, a legal analyst, were tasked with investigating the phenomenon of disparate unfounded rates among police services within driving distance of one another. They settled on four departments in the province's Lower Mainland. Three of those were RCMP detachments – Chilliwack (with an unfounded rate of 19 per cent), Langley (28 per cent), and Richmond (12 per cent); the fourth was the Vancouver Police Department (7 per cent).

After being subjected to rigorous security checks, both researchers were given access to a total of 148 police files from 2002 and 2003.

Ms. Light and Ms. Ruebsaat concluded that a case was more likely to be classified as a real, "founded" allegation – meaning police believe a crime occurred – if the file noted that: the victim had said "No"; if the victim appeared upset; if force was used; if the victim physically resisted; if the suspect was a stranger; if the victim did not present mental-health issues, which the study said included drug and alcohol abuse. In other words, complainants who do not conform to stereotypes about the perfect victim were winding up with cases deemed unfounded at a disproportionate rate.

The researchers also noticed that the allegations that had been classified as unfounded were less likely to show evidence of a robust investigation – such as formal interviews with the victim and statements from witnesses.

Ms. Light says they were "very surprised" at how many cases police classified as unfounded without making formal contact with a suspect.

The trend lines were fairly consistent across the four B.C. police services – except in Vancouver, where the completeness of an investigation did not always seem to affect whether a case was founded or not.

The Light and Ruebsaat study was unprecedented, and remains one of the most commonly cited Canadian reports on the quality of sex-assault investigations and unfounded cases – but it was never actually published. "We were funded through the feds, and just around the time we were going to publish, there was a change of government. [Prime Minister Stephen] Harper had just gotten into power … they wouldn't publish it," Ms. Light says, adding that she never learned exactly why.

"We were very disappointed, obviously. … I didn't feel like I could go ahead and speak about it publicly. I'm sorry, now, that I didn't." (A four-and-a-half page summary of their findings, however, did make it into a justice-department article in 2007.)

Toward the end of their research, Ms. Light says, she and Ms. Ruebsaat learned that unfounded stats would no longer be made public.

An internal memo from the Canadian Centre for Justice Statistics, obtained by The Globe and Mail through access-to-information, shows that concerns over the accuracy of data arose after officials realized that some cases were being improperly classified as unfounded, while in other cases, police services were simply not recording unfounded cases at all.

"Without national data on unfounded rates, there will be no way of monitoring founded-unfounded case classification trends and no way of assessing the impact of any corrective measures that may be taken to ensure accuracy in decision-making regarding founded and unfounded determinations," Ms. Light and Ms. Ruebsaat warned in their unpublished, 78-page draft.

But one of the most prominent Canadian voices on sexual assault warns that the statistics themselves need to be treated with caution.

"Toronto's official number is seven per cent – according to the police ... I do not trust police statistics," Jane Doe says in an interview. "I don't believe that statistic. I don't believe that reflects what's really going on and what women are experiencing. And I base that on experience dealing with women who have reported and who have been turned away."

After winning her case against the Toronto police, Jane Doe continued with her activism: writing, speaking and providing guidance to police services across Canada on how to improve the system.

But after three decades on the front lines, she says, nothing has changed. "In fact, I think things are worse than they ever were before. Because we know more and we know better, and yet we continue in the same way," she says.

"Nine out of 10 women don't report, citing fear of the police investigation and the court process. The conviction rate is 1 per cent [when you factor in how few cases are reported]. Why aren't we out on the street with torches?"

Around 10 years ago, Jane Doe says she was permitted to audit a police-training course on sexual assault. "The first two modules were about how to spot a false allegation. They said, 'You really have to be watching for body language. Is she too upset? Is she upset enough? Is she angry? Is she trying to get even with a boyfriend? Is she looking for attention?" Jane Doe says. (False reports are not synonymous with the unfounded designation, although they are typically classified as unfounded.)

Almost every session was taught by a police officer, rather than by outside professionals with specific specialties, such as experts who study trauma, sex-assault law and victim behaviour. Advocates and counsellors who work with survivors on a daily basis were not represented at all, she says.

"If you want to fix the system ... a good place to start is with police training," she says.

MORE SCIENCE, LESS GUT

Be warned, clinical psychologist Lori Haskell told the room of police officers: The material is going to be dense.

On this day early last October, Dr. Haskell is speaking to about 160 officers at the Toronto Police College. Over the course of the previous

year, she had given the same presentation about 50 times to Crown attorneys and police services from all over the country, about double the number she gave the year before. "But it's very inconsistent. I get called in because some officer will see my presentation and say, 'You've got to come do this for us,'." Dr. Haskell says. "I think the fact that I'm getting 50 trainings this year means there's not enough people doing the work."

Dr. Haskell is one of Canada's leading specialists in how the neurobiology of trauma factors into sexual-assault cases. In addition to her private practice and research, she is also a sought-after expert witness and consultant. (She was hired to try to re-educate Alberta Federal Court Justice Robin Camp after he was called before a judicial-review committee for asking a 19-year-old sexual-assault complainant: "Why couldn't you just keep your knees together?")

But much of her work in the last few years has been teaching what's known as a trauma-informed approach to investigating sexual assaults. It takes the gut-instinct subjectivity of an officer out of the equation, and instead roots an investigation in non-negotiable science.

Officers have traditionally been taught to establish credibility by getting as much detail as possible, as soon as possible, and then checking back with anyone interviewed to see if those details change in subsequent interviews. Standard technique has also been to go through the story chronologically. Sometimes complainants would even be asked to tell the story backward.

This way, the old way, the way that most officers continue to investigate sexual assault, is actually the exact opposite of what should happen, Dr. Haskell says, and it's causing even the most well-intentioned officers to disbelieve real victims.

It all starts with the brain.

When a person fears for their life, the brain's built-in danger alarm, the amygdala, starts to go off, flooding the body with adrenalin. Blood and oxygen divert to the muscles, and non-essential systems take a back seat. The hippocampus is responsible for filing long-term memories, but in times of intense fear, when the brain is flooded with stress hormones, its functioning is altered. Certain parts of the experience can be totally burned into memory while others are stored poorly or not at all.

Trish McAlaster/The Globe and Mail

What this means for a sexual-assault victim is that their ability to retain memories, especially certain kinds of memories, is impaired. And this is even without the complicating effects of alcohol or drugs.

"So what's this mean?" Dr. Haskell asks the group of officers she's training. "If I pulled out a gun right now … what would you be focusing on? You'd be looking at the weapon.

"If I said to you, 'How many people are in the room? Can you describe the colour of the tie of the guy next to you?' … You are not encoding the colour of the walls. You are not encoding the clothing. You wouldn't know how many people were in this room. That's not how the brain works."

This is why victims can't always give a linear account of an attack. Instead, they'll remember a smell or an image. These are called sensory fragments, and the best way for an officer to gather information is to find these pieces, then work forward and backward from them, without getting caught up in whether a victim can remember peripheral details.

"Credibility for police is established right away," Dr. Haskell told The Globe. "If police think, 'This person can't talk about this coherently. This story doesn't make sense – it's all over the place. I can't understand this. This is not believable,' I don't think a lot of cases even get past this point." (Such training can be valuable for other kinds of police interviews as well, she notes.)

David Lisak, a psychologist who runs the same type of trauma training sessions with police services and military personnel in the United States, says the demand for those courses took off five or six years ago.

Dr. Lisak says that the other big change involves a rethinking of the best time to interview victims. It can take up to 72 hours for stress hormones to leave the brain – meaning a victim who is questioned immediately after an attack will not have access to their full memories. They're also often tired, haven't eaten, and perhaps feel ill from the effects of alcohol.

Those who study trauma recommend that police officers wait at least 24 hours, or even 48, to conduct an in-depth interview with a victim. Officers would still be able to take down basic facts about an allegation right away, in order to start the investigation – and exceptions would be made in instances where there is an ongoing public threat, which is almost never the case in sexual assaults. But a full statement should wait.

"That's actually become the policy for officers involved in incidents in many, many police departments. They'll wait approximately 24 to 48 hours [to interview] an officer [under investigation]. That certainly has not become any general policy around interviewing sexual-assault victims," Dr. Lisak says. "We obviously make the point: If that's a wise

policy for officers involved in incidents, surely it's wise to follow for interviewing other people."

Other aspects of the new training try to debunk myths about how victims behave.

Although the Light and Ruebsaat study found that police were more likely to dismiss an allegation as unfounded in instances when a victim didn't fight back or say no, one of the body's survival instincts – alongside fight or flight – is freeze. If a victim reported feeling like they were having an out-of-body experience, or that they couldn't talk, this could be evidence of what's called disassociation, a response to trauma. Yet, police almost never ask questions that will pull out this useful evidence, says Dr. Haskell.

One way to lower unfounded rates might simply be to introduce officers to better interviewing techniques. "I think a lot of people who wanted to be police officers wanted to stop crime and help victims. … So there is a willingness," she says. "At first, people can be defensive. They don't want to believe that they've been doing this wrong. They've been trained to do something completely counterproductive or harmful."

CASE LOADS AND COMPLEXITY

No province mandates specialized sexual-assault training as a prerequisite to handling such investigations. The topic is covered during the basic training that every officer receives, but advocates and experts say that the lessons are outdated and inadequate, given the unique challenges associated with investigating sexual assault.

And while more and more forces are choosing to host experts such as Dr. Haskell, the sessions are typically one-off initiatives, targeting select groups of officers. Individual police services with dedicated sex-crimes units do typically require that any new members attend specialized training. These sessions usually run between one and two weeks.

"The sex-crimes unit is part of the criminal-investigators bureau in Winnipeg. You apply to come here," says Insp. Kelly Dennison of the Winnipeg Police Service.

"When you come to a specialty division, usually you have taken a number of courses to lead you to this division. Once you're here, we invest in those officers' training in things like forensic interviewing. … We continually train our officers."

Winnipeg police had one of the lowest unfounded rates in the country, 2 per cent.

Insp. Dennison says he doesn't want to speculate about what might lie behind the comparatively high rate of sexual-assault unfounded cases at some other police services, but he notes that the Winnipeg service has a number of policies in place that might be contributing to its low unfounded numbers.

Chief among them is a governing philosophy that false reporting doesn't happen that often. "If a report of sexual assault is received by the police service, the only way that it would be categorized as unfounded is if we could prove that it probably didn't happen. Which is rare, right? You don't get a lot of people reporting this type of serious offence if there's not some sort of basis to it," he says.

Second, an investigator with the sex-crimes unit follows up with every complainant. In police services across the country, the usual process is that a call comes in and front-line officers make initial contact with a potential victim. They'll usually take an initial statement and file a report, secure the scene, and identify any witnesses. Then the file is passed on to the specialized team.

Insp. Dennison says that, regardless of what the constables report back – even if the complainant changes their story during the course of the initial interview, or evidence suggests that the crime didn't actually happen – sex crimes investigators will always follow up directly with the alleged victim.

Even in cities that do have sex-crimes units, the specialized officers aren't always involved in sexual-assault investigations. In Ottawa and Peterborough, Ont., for example, the specialized unit handles most – about 90 per cent – but not all cases. In Calgary, allegations involving intercourse, repeat offenders, weapons or bodily harm are dealt with by the sex crimes unit. In Roussillon, Que., the sex-assault unit has just two investigators, but four other officers have taken a month-long specialized course, so they assist when needed. And in Toronto, the unit focuses on cases in which the perpetrator is a stranger to the victim, and thus investigates only about 10 per cent of all sexual-assault allegations. Police spokesperson Mark Pugash, however, notes that the service also has a policy that any officer investigating sexual assault must have attended a two-week Sexual Assault Investigators course. To date, 2,076 uniform officers – about 40 per cent of the service – has had the training.

Of course, the vast majority of police services don't have dedicated sex-assault units. In many areas of the country, especially in rural and Northern communities, front-line officers are required to handle every type of call. At the end of a shift, there's no one to pass a complex case

off to, so officers are left juggling those investigations with regular patrol duties.

Rob Creasser, a spokesperson with the Mounted Police Professional Association of Canada, one of two groups hoping to represent the RCMP at the bargaining table (the Senate sent Bill C-7, which will allow the Mounties to unionize, back to the House of Commons last summer) says that resources are a huge issue when it comes to sexual-assault cases.

Nicole Xu/The Globe and Mail

"They're not simple cases. They're very time-consuming," says Mr. Creasser, who was an RCMP officer for 28 years in B.C. before retiring in 2010. "Especially in smaller areas, they have to do everything ... they go to anything from a barking dog to a break-and-enter to a sexual assault. And those case loads are huge."

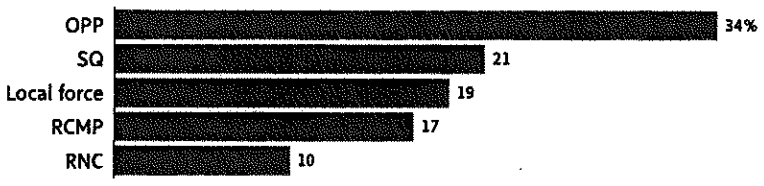
As Canada's largest police service, the RCMP and its approximately 18,500 police officers fill the role of provincial police in every province but Ontario, Quebec and Newfoundland. In The Globe's analysis, the force had an overall unfounded rate of 17 per cent. Also below the national rate was the Royal Newfoundland Constabulary, at 11 per cent.

Interestingly, the data showed that both the RCMP and RNC were just as likely to classify a physical assault as unfounded as they were a sexual assault. In fact, the RNC was more likely to unfound a physical assault – that rate was 14 per cent.

Meanwhile, the Sûreté du Québec came in at 21 per cent. The Ontario Provincial Police, however, was a clear outlier: 34 per cent of the sexual-assault cases handled by the OPP were classified as unfounded.

Unfounded sexual assault rate by police service

Percentage of sexual assault allegations cleared as unfounded (2010-2014)



THE GLOBE AND MAIL

The OPP, which is the second-largest police service in Canada, with more than 6,200 uniformed officers, declined to comment for this story, but former commissioner Chris Lewis defended his former charges. "My gut feeling is 99 per cent of cops out there, if they're investigating a crime, they want to catch the guy who did it. I think they want to believe the victim and want to prevent the victimization of others," he says.

"The vast majority of officers are parents, they're brothers, they're fathers, they're mothers and sisters. And if someone has committed a crime, they want to get them. That's a general statement. Now are some officers better at it? ... Are all the boxes always being checked? Do sometimes things fall through the cracks? We're humans, not robots."

The Globe interviewed dozens of individuals who deal with victims of sexual assault, including activists, crisis-centre staff members, criminologists, trauma specialists, lawyers, Crown attorneys and sexual-assault nurse examiners, about how the investigative process can be improved. The two most common suggestions: Increase training and introduce some form of standardization.

"I think what would really help is to have a set of national standards or guidelines for police responding at the scene and particularly around their behaviour – how they present themselves to the victim and also how they ask the questions of the victim," says Deb Tomlinson, the CEO of the Association of Alberta Sexual Assault Services. "That initial interview is so important. It can set the stage for how police found or unfound the case, but also set the stage for whether you have a willing victim – a victim willing to go forward."

Many provinces already have something similar in cases of domestic violence; in fact, in Alberta and B.C., any officer investigating a domestic incident must have had mandatory specialized training. In Prince Edward Island, every municipal police officer is required to go through domestic-intervention training every three years. In New Brunswick, a ministry spokesperson said it "is likely" that at least 90 per cent of the service has received additional training on domestic incidents.

Some provinces, including B.C., Ontario, Alberta and Prince Edward Island, have developed domestic-violence checklists or handbook guides for police. Officers use these resources to "ensure comprehensive police investigations of domestic-violence incidents," the federal Department of Justice website reads, describing PEI's program.

The Globe questioned every province and territory about its policies and resources surrounding domestic violence, as well as sexual assault. In general, most had in place detailed strategies and partnerships with social agencies to address the former, but few reported similar measures when it came to sexual violence specifically.

The exception is Ontario, which in March, 2015, launched the "It's Never Okay" campaign, at a cost of $41-million. The initiative has meant increased funding to sexual-assault centres, and a pilot program that gives up to four free hours of legal advice to sexual-assault complainants in some areas. It has also created a designated unit of Crown prosecutors with expertise in handling sexual-assault cases, who not only take on cases themselves, but offer mentoring.

Where police are concerned, the campaign has promised to "develop tools and identify best practices" that will "support a compassionate and sensitive response" from law enforcement, although what those might be at the moment isn't clear.

Most provinces advised The Globe to contact individual police services for more information about how they are approaching sexual-assault investigations, since the bulk of those policies and procedures are handled at that level. The Globe sent a survey of 15 questions to more than 100 police services about training, policy, oversight and resources.

Only 18 replied with detailed answers. One Quebec municipal service said the questions must be submitted as a freedom-of-information request. One small Ontario force said the Globe would need to hire a paid duty officer for $68.44 an hour to reply. Additionally, 10 municipal forces – even large police services in Ontario with media-relations units, including Niagara, York, Halton and Guelph – replied with the same 200-word e-mail refusing to comment.

"As a collective, the policing community works together to identify trends, gaps or challenges, while also sharing best practices in areas that assist in reducing the victims of crime," it read in part. "We do not believe it is in the public interest to pull staff from their core duties to respond to your request."

FOUNDED

The two women found Ava lying naked, sobbing uncontrollably and covered in dirt near the pine tree at the north corner of the house where the keg party was unfolding.

"Were you raped?" one of them asked.

Overwhelmed and embarrassed, Ava told them she just wanted to get home. The women – Ava has no idea who they were – found her something to wear, gave her some money, and put her into a cab.

The police and Ava's parents were phoned once she arrived back at Delaware Hall. Ava was taken to the hospital for a sexual-assault examination. Nurses swabbed her genitals and her mouth, took hair samples and scrapings from under her nails, drew blood, and documented every scratch and bruise on her body. The process took several hours, she recalls. Around 4:15 a.m., a constable took an initial statement. Then, once she was finished at the hospital, Ava was summoned to police headquarters for her full video interview.

When that interview began at 12:38 p.m., roughly 12 hours after the incident, Ava had not slept or eaten, and was feeling nauseated from the night before.

Ava's mother and father say that when their daughter went into the interview room, she was adamant that she wanted to proceed with charges. But when she emerged 35 minutes later, everything had changed.

The Globe obtained a copy of the footage, as well as the case file.

The video begins with Ava sitting in the corner of a small room, maybe six by 10 feet, facing the detective. He introduces himself as Det. Paul Gambriel. She is crying, and apologizes for it.

A screen grab from Ava's police interview video.

The detective explains that he's aware she has given a previous statement to a constable. This current, videotaped interview is the

important one, he says, where they will go through everything in detail, so nothing gets missed. He asks her to start at the beginning.

It takes about eight minutes for Ava to skim through what she remembers chronologically.

"You consumed quite a bit of alcohol," Det. Gambriel says, "and despite the consumption, you're still remembering things that are going on at this point."

She agrees.

So, she remembers watching drinking games?

Yes.

And then it just drops off?

Yes.

"While you were downstairs, though, you were making out with this guy before you went outside," Det. Gambriel tells her.

"Was I?" she asks.

"Yeah. Was there any reason you didn't tell the police officers that?"

"I don't remember that," she says.

"Because there are some people at the party that saw that happen."

The detective spends the rest of the interview pointing out problems with her story, mostly about the fact that she had blank periods in her memory. He never returns to her brief summary of the night, to pull out more detail; in fact, he doesn't ask her any questions about the actual alleged rape.

"I blacked out, and then I came to my senses, and then I remember saying no, like, 'You're hurting me, no,'." Ava answers calmly.

"So, you black out and you don't remember anything. But then you suddenly come to and you're able to tell him to stop – that, no, you don't want this to occur?" he asks.

The detective then goes on to tell Ava that they found her underwear, which had "discharge" on it. Ava takes this as a suggestion she had somehow biologically consented to the alleged assault. The detective tells her that they found her clothing and "it's not like it's torn or anything."

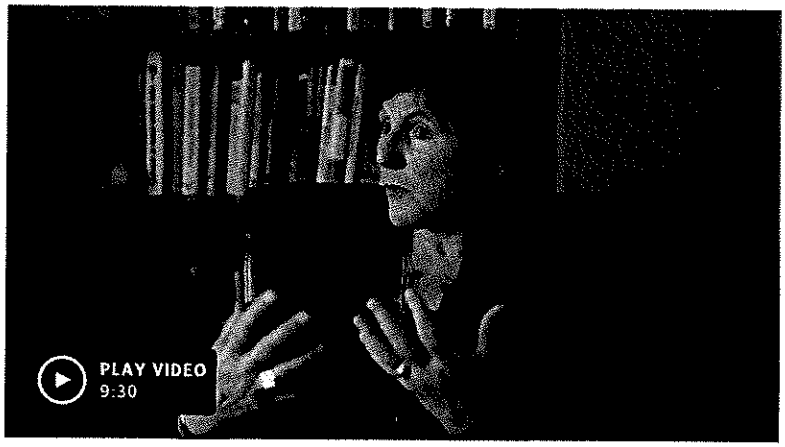
In the end, he tells Ava that it seems as if she is more upset about the fact someone had photographed the incident.

"I've been doing this, Ava, for 22 years," the detective says. "Whether people are intoxicated or whether it's drugs or whether it's a

combination of both, it's not a sudden loss of memory and then a sudden regaining of memory. It's a gradual and a gradual. So I don't know how you can block out one specific aspect of the night, but remember the rest."

(That is exactly how memory works, says Dr. Haskell, who reviewed the footage.)

A trauma expert analyzes Ava's police interview



Reporting and production by Robyn Doolittle; Video and editing by Melissa Tait; Additional production by Laura Blenkinsop and Timothy Moore

Perhaps, Det. Gambriel says, "it's not so much the sex that's the issue here, it's the voyeurism."

Ava pauses. "I just – so, why are you saying these things? Like, do you not believe me?"

"Maybe the sex was consensual and it wasn't until everybody shows up and interrupts and has these cameras out that now it's become a significant issue for you and this other party," he says.

Ava explains that it was the fact that people weren't helping: "It worries me that people would see a situation like that, where I was like, 'No, you're hurting me,' and would take pictures. That's what gets me mad, because that's not a normal thing to do."

To this, the detective says he appreciates how honest Ava has been about how drunk she was, which would have impaired her judgment.

Twenty-four minutes into the interview, the detective gets up and tells Ava to "think about it for a minute" while he checks on the video recording. When he returns, he tells her that, whatever she wants to do next, she should make the decision on her own and not let "mom or dad" influence it.

Ava replies that she thinks she'd like to put everything behind her.

Four weeks later, the detective closed the case as an unfounded sexual-assault allegation. The report noted that the suspect was contacted and "warned re: sexual assault."

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Galit Rodan/The Globe and Mail

Melanie Randall, a law professor at Western University who has studied sexual-assault law, and who also reviewed Ava's file, says the interview is a textbook example of what not to do.

"The officer ran interference in so many places, failed to understand the law, failed to understand memory and traumatic events, didn't listen to key things she said, didn't ask her the right questions, arrogantly imposed his own version of what happened, challenged her repeatedly, pretty much suggested that he didn't believe her, and reframed the event as consensual," Ms. Randall says.

After The Globe approached the London Police Service for comment, Ava's file was put under internal investigation by the professional-

standards unit. Det. Gambriel declined to comment because of the ongoing investigation.

It has been redesignated as a founded allegation.

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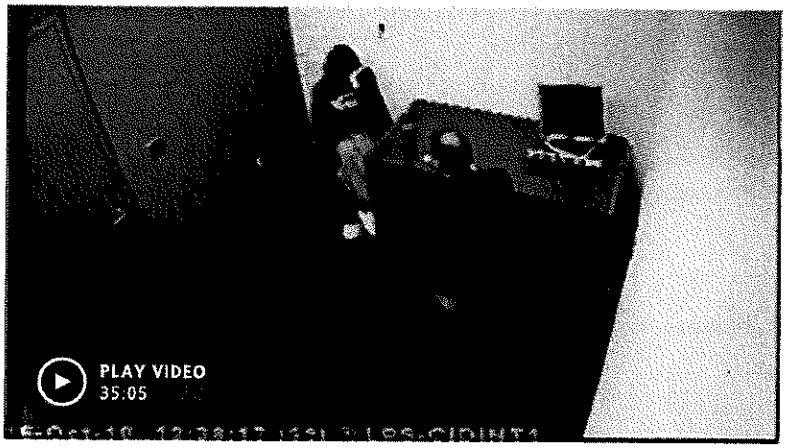
With data reporting and analysis by Terra Ciolfe, Laura Blenkinsop, Michael Pereira, Jeremy Agius, Shengqing Wu, Rick Cash, Stephanie Chambers and Tu Thanh Ha.

Robyn Doolittle is a reporter with The Globe and Mail's investigative team.

Have you reported a sexual assault to the police? If you would be willing to share your experience with The Globe and Mail, please email robyndoolittle@globeandmail.com

The Globe's SecureDrop service provides a way to securely share information with our journalists on any topic. You can find it at https://sec.theglobeandmail.com/securedrop/

Ava's full police interview



Ava's mother and father say that when their daughter went into the interview room, she was adamant that she wanted to proceed with charges. But when she emerged 35 minutes later, everything had changed.

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UNFOUNDED: A Globe investigation into how police handle sexual assault allegations

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UNFOUNDED

RCMP won't say if it plans review of recent sexual-assault cases

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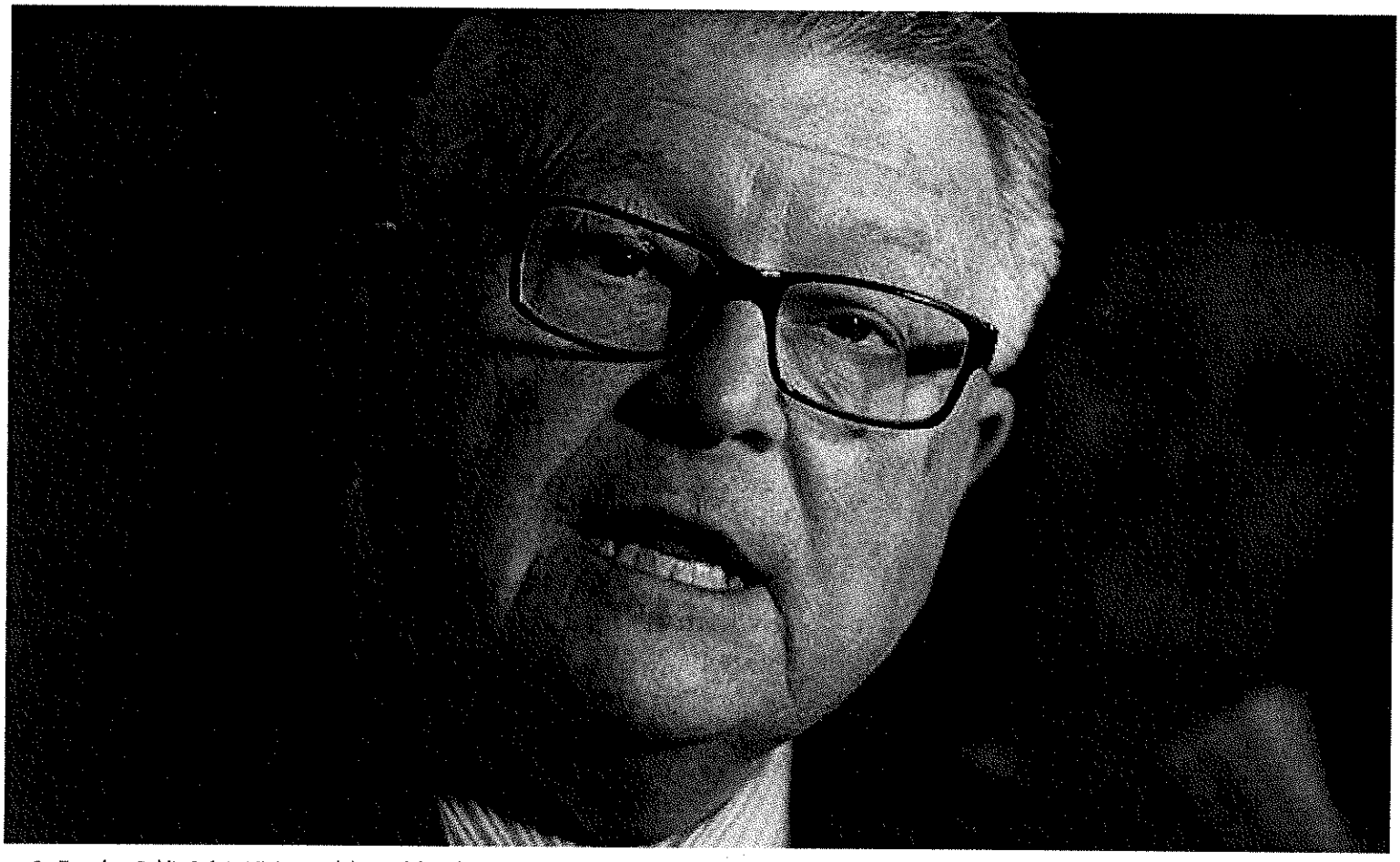

On Tuesday, Public Safety Minister Ralph Goodale, who oversees the Mounties, urged forces big and small to audit how they approach sexual-assault allegations.

ADRIAN WYLD/THE CANADIAN PRESS

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ROBYN DOOLITTLE >

INCLUDES CORRECTION
PUBLISHED FEBRUARY 8, 2017
UPDATED MAY 17, 2018

The nation's largest police force has not said if it plans to mount an audit of recent sexual-assault complaints, leaving it out of step with a growing legion of law-enforcement agencies launching wholesale case reviews in light of a Globe and Mail investigation.

The RCMP said on Wednesday it would look at how it handles future sex-assault allegations – even as all nine police departments in New Brunswick not run by the RCMP, and eight elsewhere, announced comprehensive probes.

The Ontario Provincial Police alone plans to pore over approximately 4,000 sexual-assault investigation reports that officers deemed unfounded between 2010 and 2014.

Read more: Will police believe you? Find your region's unfounded sex assault rate

On Tuesday, Public Safety Minister Ralph Goodale, who oversees the Mounties, urged forces big and small to audit how they approach sexual-assault allegations. The minister's request came in the wake of a Globe probe into the disproportionate number of sex-assault complaints being dismissed by investigators as unfounded. The investigation, and the call from Mr. Goodale, has so far triggered at least 24 reviews.

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Meanwhile, in British Columbia, Premier Christy Clark said she was "heartened" by the finding that police in her province were more likely to believe sex-assault complainants and said the problem is more pressing elsewhere.

"I think Ontario is probably confronting a more urgent problem [than B.C.] – the numbers The Globe uncovered suggested it's much tougher in Ontario to find a police officer who believes you when you report a sexual assault," she said on Wednesday. "That doesn't mean we can't do better here so the Justice Ministry is looking at that now."

The RCMP's approach raises questions about equal access to justice in places such as New Brunswick, where complainants living in nine communities policed by municipal forces will have their allegations reviewed while those living in RCMP-policed jurisdictions will not.

Across 467 communities nationwide policed by RCMP detachments, the force had an unfounded rate of 17 per cent, slightly better than the national average of 19 per cent. But at least 77 of those jurisdictions posted unfounded rates topping 30 per cent.

In all, Globe data requests for 140 RCMP jurisdictions remain outstanding.

"The RCMP has worked and continues to work to ensure that its policies with respect to how it collects and assesses evidence, and its practices aligning with those policies, are robust and effective," RCMP spokesman Harold Pfleiderer said. "In light of recent reports, we are examining those policies and practices to ensure that they are consistently adopted and enforced across all of our jurisdictions."

In a statement on Wednesday, Mr. Goodale's office further clarified his position, saying RCMP policies and training procedures will be updated "if a gap is identified in how sexual assaults are investigated." In addition, the federal government wants RCMP officers to have better training on the proper way to enter data on sexual-assault cases in the force's records-management systems.

"Better data input will ensure we have better data to inform decision-making," Mr. Goodale's office said.

The RCMP announcement came a day after Mr. Goodale raised the issue directly with RCMP Commissioner Bob Paulson and called on police and prosecutors across Canada to "re-examine all of their approaches, all of their procedures, all of the ways that cases are managed, that investigations are conducted."

The minister was responding to a 20-month Globe investigation that drew on 250 freedom-of-information requests in revealing that, on average, one out of five sexual-assault complaints is dismissed as unfounded by Canadian police investigators.

Independent research from around the world suggests the actual rate of false reports lies somewhere between 2 per cent and 8 per cent.

The one-in-five figure hides jarring variations between jurisdictions. Sexual-assault complaints are categorized as unfounded 16 per cent of the time in Fredericton and 51 per cent of the time in Saint John, both in New Brunswick and both around the same size.

"I know police forces work really hard, but clearly across the country some are doing a better job than others," Ms. Clark told reporters. "Everybody needs to be striving to make sure women feel they are heard when they are hurt."

Paul Fiander, president of the New Brunswick Association of Chiefs of Police – who also heads the Miramichi police department –

In Miramichi, the review will focus on cases closed as unfounded beginning in 2010. Chief Brent Blackmore of the province's Woodstock department said he will be waiting to hear from the other chiefs before setting up a framework for the review so that it is consistent.

Beyond New Brunswick, eight more police services said they would either be starting an audit of unfounded cases – or had already completed one as a result of The Globe's inquiries. They include: South Simcoe Police; Woodstock (Ont.) Police Service; Delta Police Department; Truro Police Service; Hamilton Police Service; Service de police de la ville de Gatineau; Waterloo Regional Police Service; and LaSalle Police Service.

In Truro, N.S., the police chief vowed to get to the bottom of his force's 55-per-cent unfounded rate.

"I was surprised to see that our police service had such a high number of cases cleared as 'unfounded,'" Chief Dave MacNeil said in an e-mail, "and as a result of this, I wanted to know why."

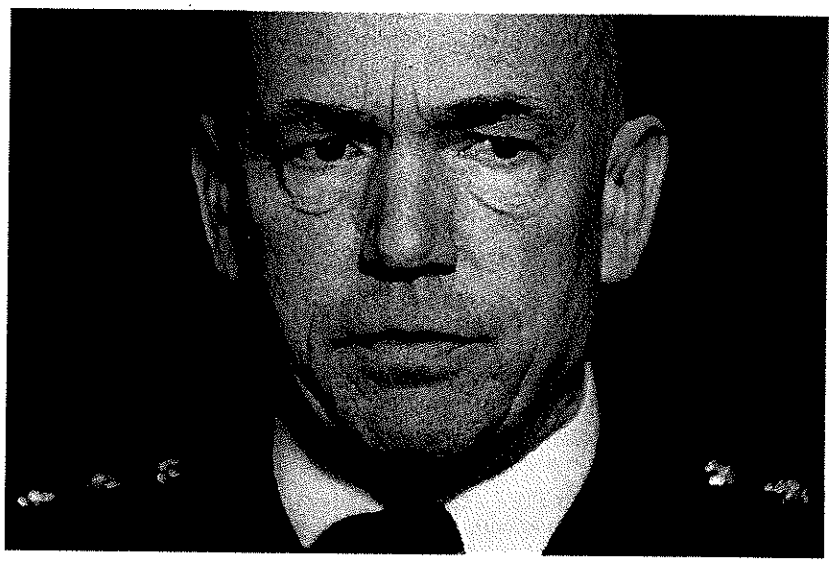
With a report from Justine Hunter

The findings of a 20-month long investigation expose deep flaws in the way Canadian police forces handle sexual assault allegations. The Globe's Robyn Doolittle explains.

Editor's note: An earlier version of this story incorrectly said the RCMP had declined to review sex-assault cases. In fact, as correctly reported Friday, the RCMP said they are reviewing all cases that were dismissed last year and were sampling older cases. The RCMP said that order was given on Wednesday but not communicated to the reporter.

UNFOUNDED

National strategy for handling sex-assault cases in the works



Royal Canadian Mounted Police Commissioner Bob Paulson speaks to media after a public safety committee meeting on Parliament Hill in Ottawa on March 6, 2015.

BLAIR GABLE/REUTERS

DANIEL LEBLANC > PARLIAMENTARY AFFAIRS REPORTER
OTTAWA
PUBLISHED FEBRUARY 9, 2017
UPDATED MAY 17, 2018
89 COMMENTS

Canada's public safety ministers have started to lay the groundwork for a national strategy to deal with sexual-assault cases, to ensure police and prosecutors use a common set of practices in dealing with victims of sexual violence, The Globe and Mail has learned. The matter is expected to be discussed at the next meeting of federal, provincial and territorial ministers of public safety later this year to develop a "pan-Canadian approach," a federal official said.

Governments and police forces across Canada are taking steps to improve their handling of sexual-assault cases after The Globe revealed a patchwork approach among police forces and a surprisingly high number of files that are classified as "unfounded" in certain jurisdictions. "Unfounded" indicates the investigating officer does not believe a crime was attempted or occurred.

In response, RCMP Commissioner Bob Paulson has announced that he has given his regional commanders until mid-April to review all cases that were closed in this fashion last year.

Related: Unfounded: How police and politicians have responded to The Globe's investigation so far

Read more: Unfounded: Police dismiss 1 in 5 sexual assault claims as

For near two years a team of Globe journalists, including investigative reporter Robyn Doolittle, dug into the figures and the people behind alleged sexual assault cases which police can deem "unfounded."

Also: Will police believe you? Find your region's unfounded sex assault rate

The RCMP will also look at a sample of older cases as it joins a number of other police forces in reviewing files to see whether they were mishandled or reveal systemic problems in the handling of sexual-assault complaints.

Commissioner Paulson told The Globe on Thursday the RCMP would undertake the review.

"We directed that each [commanding officer] would review their unfounded sex-assault cases for compliance with our policy and the reasonableness and propriety of decision-making having regard for the evidence," Commissioner Paulson said Thursday morning.

The RCMP expect that the review will take about two months, at which point the force will consider "further policy updates and/or training" to improve its practices, said spokeswoman Julie Gagnon.

A Globe analysis of data from more than 870 police jurisdictions found that investigators dismiss one out of every five sex-assault claims as unfounded.

When an allegation is designated as unfounded, it is not reflected in any local or national statistical records.

Across 467 communities nationwide policed by RCMP detachments, the force had an unfounded rate of 17 per cent, slightly better than the national average of 19 per cent. But at least 77 of those jurisdictions posted unfounded rates topping 30 per cent. In all, Globe data requests for 140 RCMP jurisdictions remain outstanding.

Independent research from around the world suggests the actual rate of false reports lies somewhere between 2 and 8 per cent.

Earlier this week, Public Safety Minister Ralph Goodale called on police investigators and Crown prosecutors "to re-examine all of their approaches, all of their procedures, all of the ways that cases are managed, that investigations are conducted to make sure that we fix this problem and that our criminal justice system is delivering justice to those who in these circumstances have been so brutally victimized."

including policies and procedures at the local level," said Marie-France Lalonde, Ontario's Minister of Community Safety and Correctional Services.

On Thursday, two Quebec municipal services, Sécurité publique MRC des Collines-de-l'Outaouais and Le Service de police de Terrebonne, told The Globe that they would not be taking any action with respect to their handling of sex-assault cases as they have not received direction to do so from the province's Ministry of Public Security.

In Ontario, Kingston, Sudbury, North Bay and Sault Ste. Marie, police services have announced reviews, bringing the total number of services completing a review to at least 29.

Meanwhile, the federal government is preparing to announce a new strategy on gender-based violence in Canada that will include better data collection and more long-term funding for community groups.

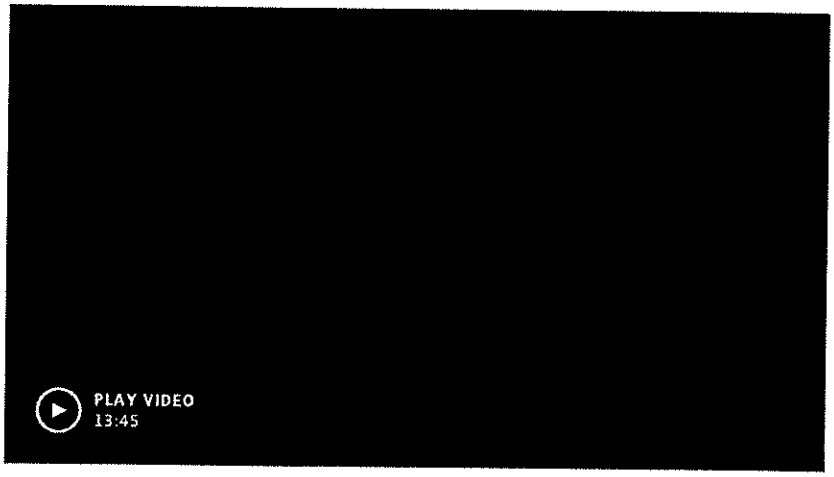
"We know that gender-based violence is completely unacceptable and we are committed to ensuring that women and girls can live free from all forms of violence. In the coming weeks, we will be releasing the federal strategy to address and prevent gender-based violence," said Matthew Pascuzzo, a spokesman for Status of Women Minister Maryam Monsef.

Speaking in Washington, Finance Minister Bill Morneau suggested that he will ensure there will be appropriate funding for the new strategy.

"We want to make sure that our system deals with victims of violence and sexual violence," Mr. Morneau said. "And my ongoing job will be to make sure that we're resourced for that challenge."

With reports from Adrian Morrow in Washington and Robyn Doolittle in Toronto

Have you reported a sexual assault to the police? If you would be willing to share your experience with The Globe and Mail, please email robyndoolittle@globeandmail.com



Ava reported a sexual assault to police in 2010 while in her first year of university. The investigation did not go as she hoped. Six years later she requested access to her police file and received her documents, including a video taped police interview.

351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1
Phillip Crawley, Publisher

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THE GLOBE AND MAIL

OPINION

Unfounded: For real change, we need more than internal police reviews

161

ELIZABETH SHEEHY AND TERESA SCASSA
CONTRIBUTED TO THE GLOBE AND MAIL
PUBLISHED FEBRUARY 28, 2017
UPDATED MAY 17, 2018
32 COMMENTS

Elizabeth Sheehy is professor of law at the University of Ottawa. Teresa Scassa is the Canada Research Chair in information law at the University of Ottawa.

The Globe and Mail's investigative series Unfounded offers an unprecedented opportunity for change at the level of police investigations of sexual assault. The journalism reveals the breadth and depth of the problem, and makes clear to ordinary Canadians that practices of unfounding not only cause tremendous harm to thousands of women who report, but also leave the rest of us endangered by predators who remain insulated from accountability for their crimes.

At the same time, this is a dangerous moment. At least 32 police departments across the country have committed to reviewing their data, but the overwhelming majority are focused on internal reviews – not reviews that render their practices transparent, accountable and open to long-term and sustainable change.

Unfounded: How police and politicians have responded to The Globe's investigation so far

Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless, Globe investigation reveals

Interactive: Will the police believe you? Compare unfounded sex assault rates across Canada

What is so bad, one might reasonably ask, about internal review? Isn't it better than nothing? Internal review allows police departments to characterize the problem as simply one of data mismanagement. They re-classify cases previously in the "unfounded" box to "insufficient evidence to proceed." While the new label might alleviate distress for women who report rape, it will effectively immunize police from external scrutiny, allowing them to avoid critical questions about whether professional and thorough investigations are conducted and how women are interviewed and informed about police decisions. Police can diffuse any pressure to improve the very low charge rate for sexual assault by asserting that the problem is resolved.

Only the Philadelphia model, tried and tested over years to the praise of both police and women's advocates, holds the potential for real and sustainable change. It requires long-term partnership between police and advocates for women who have experienced violence. Together, they regularly review all unfounded files and a random sample of files otherwise closed so that experts can ask questions and identify investigative failures or the distorting influence of myths and stereotypes. When done on a timely basis, police have the opportunity to re-open files, complete investigations and lay charges.

Both police and advocates benefit from learning from each other's expertise. The model has produced dramatic results in

To succeed, the Philadelphia model depends on the participation of front-line advocates who are completely independent of police and knowledgeable about local conditions and challenges, expert in violence against women, accountable to their own organizations for their work and bound by confidentiality oaths that meet or exceed those imposed on police. They must have access to the complete files – nothing redacted – or they will be unable to provide authoritative feedback and police will always be able to rely on superior yet undisclosed "information" to justify their decisions. – 162

Police across Canada argue that privacy laws prevent the adoption of the Philadelphia model. But is this a valid concern? While privacy laws do prevent government actors from disclosing personal information through Access to Information requests, the Philadelphia model does not rely on access to information. Participants in the review of files would have the status of consultants and would be bound by confidentiality agreements. These would be in accordance with standard practices already in place for outside consultants. Privacy is a crucial value, but it is not compromised in the Philadelphia model. It should not be used as a red herring to deflect transparency and oversight.

As the Unfounded series clearly demonstrates, such transparency and oversight are sorely needed. Canadians too deserve the "gold standard" for sexual assault investigations.

The findings of a 20-month long investigation expose deep flaws in the way Canadian police forces handle sexual assault allegations. The Globe's Robyn Doolittle explains.

Ottawa pushed to collect data on unfounded sex-assault cases

Chair of the House of Commons Standing Committee on the Status of Women Marilyn Gladu speaks surrounded by committee members after tabling the report entitled "Taking Action to End Violence Against Young Women and Girls in Canada," Monday, March 20, 2017 in Ottawa.

ADRIAN WYLD/THE CANADIAN PRESS

MICHELLE ZILIO > PARLIAMENTARY AFFAIRS REPORTER
OTTAWA
PUBLISHED MARCH 20, 2017
UPDATED MAY 17, 2018

MPs are calling for Statistics Canada to resume tracking the national rate at which sexual-assault allegations are dismissed as unfounded, and training for judges and police on dealing with sex-assault cases, citing a Globe and Mail investigation into how sex-assault allegations are handled across the country.

A report from the Commons Standing Committee on the Status of Women tabled on Monday afternoon made 45 recommendations after hearing from 99 witnesses during a year-long study of violence against young women and girls.

The committee specifically recommended that Statistics Canada resume collecting national numbers on unfounded cases of sexual offences through the Uniform Crime Reporting Survey, and provide appropriate training for the standardization and consistency of data collection from police services. The agency stopped publishing the information in 2003 amid concerns that cases were being misclassified or not recorded at all. It stopped collecting the data in 2006.

Unfounded: Why police dismiss one in five sexual assault claims as baseless

The recommendation comes after a 20-month investigation by The Globe revealed that police dismiss one in five sexual-assault claims as baseless, or "unfounded." The Globe gathered data from more than 870 police forces, exposing deep flaws at every step of the process.

"We have a patchwork of responses across the country," NDP committee member Sheila Malcolmson said during a press conference on Monday. "The Globe and Mail reporting on the unfounded crisis has really highlighted this need and we just heard this reinforced again and again."

Witnesses voiced their concerns to the committee about the high unfounded rates in cases of sexual assault, according to the report. For instance, the Antigonish Women's Resource Centre and Sexual Assault Services explained: "Women who do report to police, too often recount experiences of feeling blamed, judged, interrogated and dismissed – their trauma misunderstood, not recognized or used to support claims that their stories and, therefore, their characters, are not credible."

Another witness, Farrah Khan, sexual-violence support and education co-ordinator at Ryerson University, told the committee a system in Philadelphia's police department that brings in outside experts once a year to go over unfounded sex-assault cases is a promising practice.

"One of the things we like to look at is the Philadelphia model, where they actually have a VAW [violence against women] advocate and community case review, where they actually look at the cases that police have named as unfounded and relook at them to see what actually they could include."

The report called on the federal government to establish sexual assault advocates within law enforcement and legal bodies. More specifically, it recommended these advocates ensure complainants are aware of the full range of laws, services and options available to survivors of sexual assault, including outside of the criminal justice system, and that there is a "trauma-informed and survivor-centric approach" throughout the legal process.

The Globe interviewed dozens of people who deal with victims of sexual assault, and increased police training was one of the most common suggestions for improving the investigative process. Monday's report echoed that, recommending that the government implement a "mandatory educational curriculum" on gender-based violence and sexual violence for the RCMP and other federally regulated law-enforcement officers.

The report also recommended similar training for the judicial field as well, calling on Ottawa to provide funds to the National Judicial Institute "for the express purpose of developing comprehensive training on gender-based violence and sexual assault for the judiciary and those seeking to become part of the judiciary, and ... encourage all judges to participate in this training."

A month after The Globe and Mail published its investigation, interim Conservative Party Leader Rona Ambrose introduced a private member's bill requiring training for would-be judges on issues involved in sexual assault cases. The House of Commons has unanimously agreed to fast-track Bill C-337 to a committee stage.

Status of Women Minister Maryam Monsef is expected to unveil a federal strategy to prevent gender-based violence soon. The committee called on the minister to consider its report when creating that strategy.

"The report includes 45 recommendations that cover funding for current services, items to collaborate with the provinces and territories, and actions that we can take federally to work towards eliminating violence against young women and girls in our country," said Conservative MP and committee chair Marilvn Gladu.

"We heard much that was hard to hear, but we call upon the government to consider our report and take swift action."

For near two years a team of Globe journalists, including investigative reporter Robyn Doolittle, dug into the figures and the people behind alleged sexual assault cases which police can deem "unfounded."

THE GLOBE AND MAIL

UNFOUNDED

OPP overhauls sexual assault investigation process

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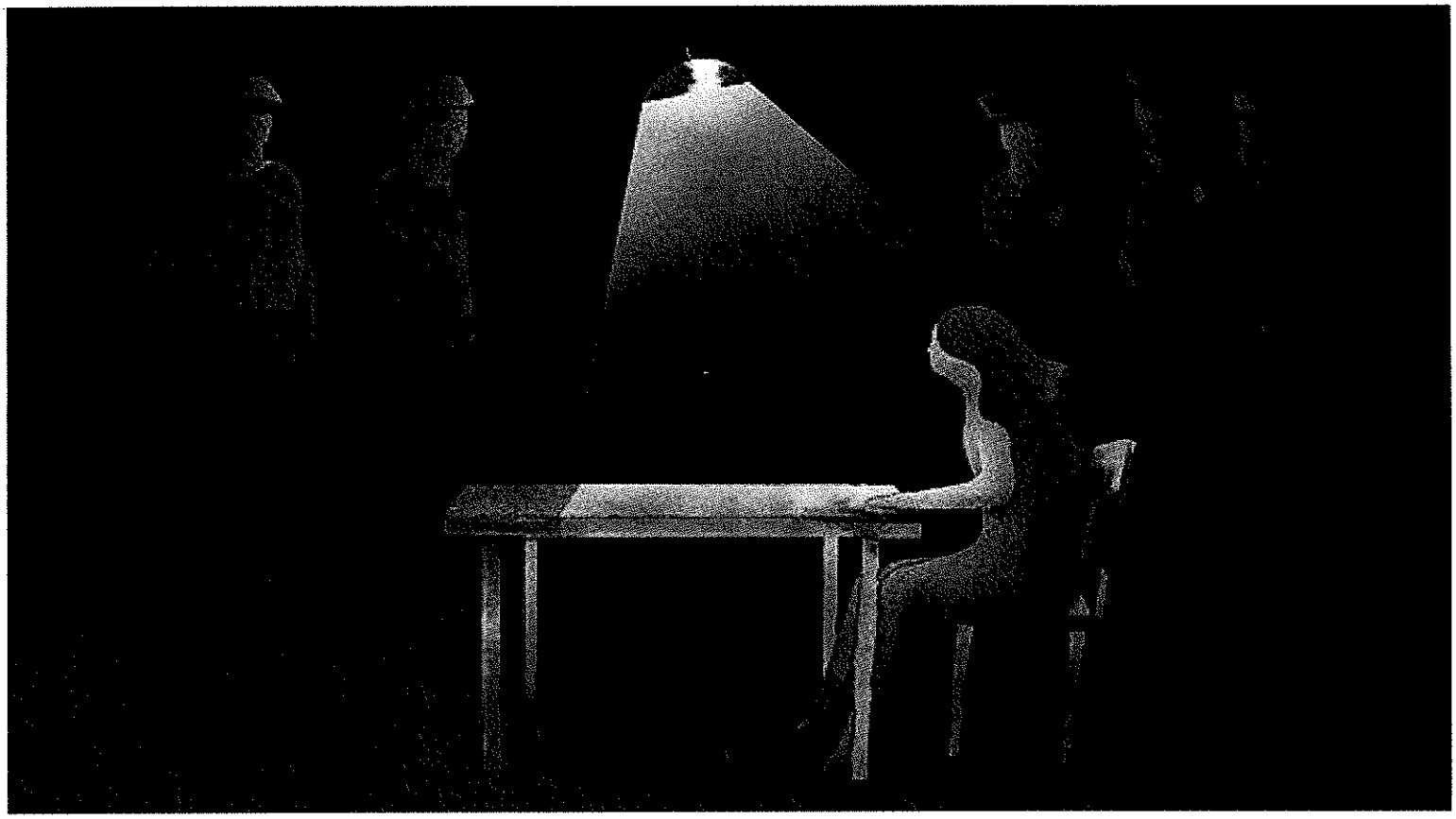


NICOLE XU/THE GLOBE AND MAIL

ROBYN DOOLITTLE >
PUBLISHED SEPTEMBER 15, 2017
21 COMMENTS

Ontario Provincial Police officers who investigate sexual assault will soon receive new training, more supervision, additional resources and external scrutiny from local victim-support groups.

The OPP, one of the country's largest police services, with more than 6,200 officers, will roll out the changes in the coming months, beginning with the creation of a specialized group of high-ranking officers who will personally monitor every unresolved sex assault case.

The service will also create five regional review committees inspired by an internationally lauded oversight model in Philadelphia, in which advocates who work with female victims of violence can examine case files for signs of bias and investigative missteps.

Unfounded: Police dismiss 1 in 5 sexual assault claims as baseless, Globe investigation reveals

These changes follow a seven-month internal review by the OPP in response to a Globe and Mail investigation that revealed that, nationally, one of every five sexual assault allegations is dismissed by police as unfounded, a coding term that means the officer does not believe a crime occurred.

As a result of the OPP's audit, 12 files were reinvestigated. One resulted in a charge, and that case is before the courts. In that instance, a witness was discovered who had not been interviewed.

As part of its audit, the OPP examined 5,322 sexual assault cases from 2010 to 2016 that had been deemed unfounded. A report on that review pointed to administrative coding errors as a reason for the OPP's unfounded rate of 34 per cent, one of the highest of a major police service in the country.

A total of 1,859 cases "could potentially have been cleared using another [coding] classification," a report summary states.

If this is the case, it would have significant implications for the OPP's sexual assault statistics, because once a file is deemed unfounded, it is no longer considered a valid allegation. It is removed from the total number of complaints the police service reports to Statistics Canada.

The OPP will not reclassify old cases, but plans to create new administrative positions in each jurisdiction to handle coding, which will provide more consistency and free up officers to concentrate on police work. Apart from coding errors, the OPP's review team, which included several dozen officers throughout the province, flagged investigative issues in 424 cases.

"Most of the time the information was there. It just wasn't in the right place," said Superintendent Jim Smyth, who was one of three senior OPP officers who met with The Globe on Thursday to discuss the organization's findings. Sometimes, he said, when it was obvious that a case was not going to result in a charge, investigators shifted their attention before completing all the necessary paperwork, such as adding interview transcripts to the sex assault file.

"From the investigators' perspective … all your priorities go to the things that are going to end up in court, what's going to be reviewed by Crowns and judges. And sometimes those other ones just keep going farther and farther down your to-do list," the Superintendent said.

"We had very few actual deficiencies. That was the good-news story out of this," the Superintendent said.

Nevertheless, the OPP have plans to overhaul the training and supervision its officers receive.

Inspector Robyn MacEachern said advances in the neurobiology of trauma – which examines how a traumatic event can affect victims' behaviour, such as causing a complainant to giggle while recounting a violent event, or their ability to remember an incident chronologically – is a "game-changer" on which every member of the service who investigates sexual assault will be educated.

About 40 sexual assaults are reported to the OPP each week. This fall, the OPP will hire five detective staff sergeants for each of its regional divisions to monitor those investigations. Part of the job will be to make sure officers use all the resources within the organization.

Supt. Smyth said that the OPP have a lot of specialized expertise, such as the behavioural-sciences unit, but front-line officers do not always use those resources because they may think the unit is too busy or their case isn't serious enough.

From there, the OPP will implement a final layer of scrutiny in its regional review committees, which will be comprised of advocates, Crown attorneys who specialize in sexual assault law and victim-services representatives. The current plan is for these groups to audit randomly selected sexual assault cases – not just unfounded files – on a quarterly basis with full access to the unredacted investigative files, including the complainant, suspect and witness video interviews. Full access is a key element of the Philadelphia model.

The OPP's North West Region is already piloting a version of this oversight model. - 168

OPP Commissioner Vince Hawkes said that at the centre of all the reforms is a desire to put the victim first.

"How do we train more people? How do we get people to understand the victim-centric approach as opposed to just focusing on the crime. Because there's a big difference there," he said.

"In the end, as the leader of this organization, I think our organization is going to be better and as a result of that, the community is going to be better."

Ontario's provincial police agency is one of the more than 50 Canadian police services to launch audits of sexual assault cases in response to The Globe's series. It is one of about a dozen services – alongside Calgary, Ottawa, North Bay and Brantford – to commit publicly to some form of external case review involving victim advocates.

rdoolittle@globeandmail.com

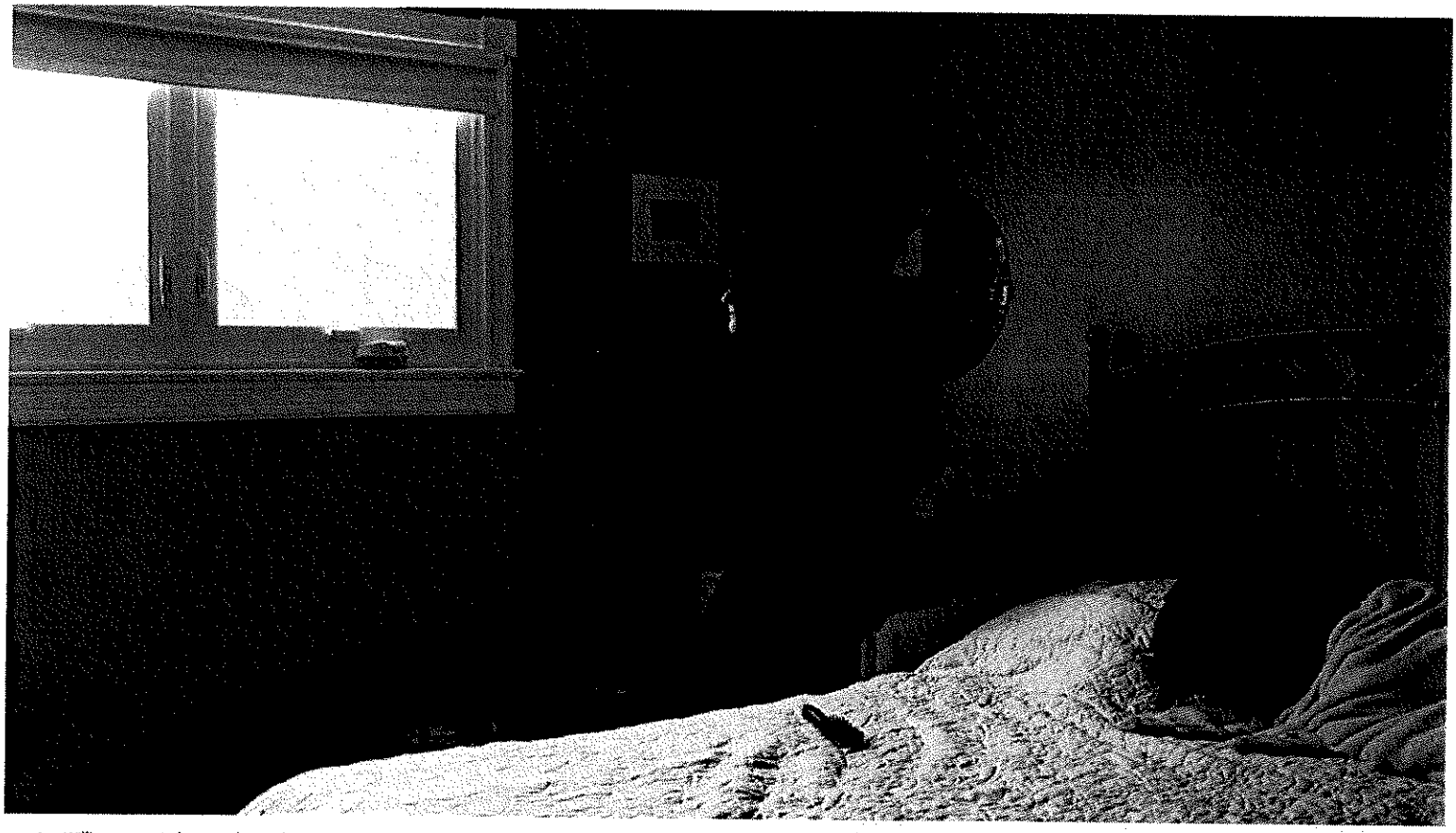
THE GLOBE AND MAIL

INVESTIGATION

169

Unfounded: How police and politicians have responded to The Globe's investigation so far

This February, a 20-month-long Globe investigation exposed flaws and inconsistencies in how sex-assault cases are closed as 'unfounded,' or baseless. Months later, many police forces who promised action have delivered, but not all, and not in the same way across the country. Here's what you need to know



Ava Williams reported a sexual assault to London, Ont., police in 2010. Her allegation was cleared as unfounded.

GALIT RODAN/THE GLOBE AND MAIL

PUBLISHED FEBRUARY 7, 2017
UPDATED DECEMBER 12, 2017

40 COMMENTS

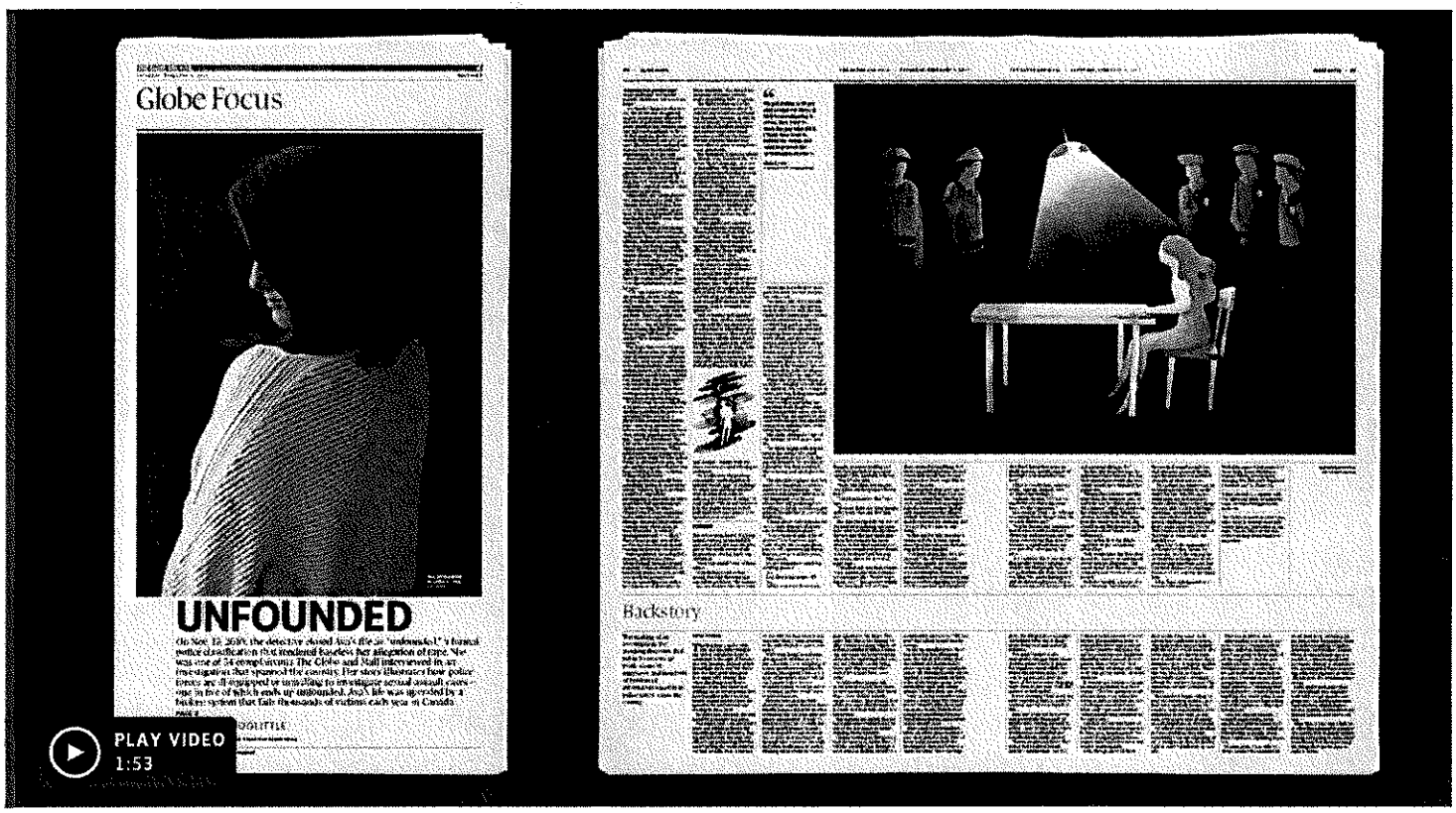
THE RESPONSE FROM POLICE SO FAR

Since the Unfounded investigation's debut, more than 100 police forces have announced investigations into sexual-assault cases that were deemed "unfounded." The Globe and Mail sent out an 18-question survey to 177 police forces to see what they had promised or done so far. Here are the highlights of what we found and the methodology behind it.

- **Cases:** At least 100 police services launched reviews of previously closed cases, resulting in 402 unfounded sexual-assault cases being reopened.
- **Classifications:** According to the survey, the police forces found 6,457 cases were misclassified, all but 109 of them designated "unfounded." Some 19,717 unfounded cases were put under review. Some forces widened their reviews to

sexual assault cases that, while not deemed unfounded, were never solved. In total, 37,272 cases were or would soon be reviewed.

- **Who's affected:** The law-enforcement agencies reviewing their unfounded policies cover some 79 per cent of Canada's population. Fifty-one per cent of Canadians live in a community whose police service is using, planning or considering some form of case review inspired by the "Philadelphia model," which give front-line advocates detailed access to the department's cases. The RCMP, Canada's largest police service, is one such force. To see what your police force is doing, go here and use the search bar at the top.
- **Who's not affected:** At several police forces in Canada, things are still status quo where unfounded policies are concerned. Thirteen services are not doing a review of their sex-assault cases, according to The Globe's survey, while 64 services' review status is unknown.



How The Globe's Unfounded investigation prompted a sweeping review of how police handle sex-assault allegations

1:54

THE RESPONSE FROM GOVERNMENT AND ITS AGENCIES SO FAR

- **Statistics Canada** will once again start collecting and publishing data on unfounded criminal cases.
- The **Liberal government** planned to invest more than $100-million over five years to create a national strategy to prevent gender-based violence, citing the Globe's Unfounded investigation.
- Canada's **public safety ministers** have started to lay the groundwork for a national strategy to deal with sexual-assault cases. The goal will be to lay out a common set of practices police and prosecutors should use when dealing with victims of sexual violence.

WHAT THE INVESTIGATION FOUND

The Globe's investigation looked at police forces across the country to see how often sexual assault cases were closed as "unfounded," meaning the investigator didn't think a crime had occurred. The findings upended conventional wisdom about how sexual assaults are reported to police, prosecuted and documented.

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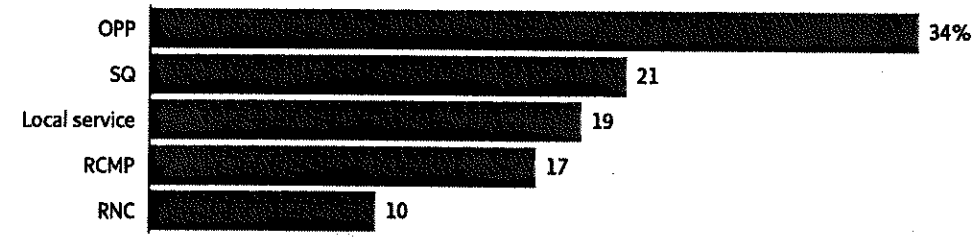
Key findings:

- Nationally, police closed about one in five sex-assault cases as unfounded.
- Unfounded rates varied considerably between provinces and cities, and even between cities that are close to one another. Calgary's rate, for instance, was 12 per cent; but in Medicine Hat, Alta., it was 22 per cent.
- The high numbers of unfounded cases weren't being documented or published by Statistics Canada, which stopped collecting the data in the early 2000s because it was concerned police forces weren't using the "unfounded" category consistently.
- Despite Canada's comparatively progressive laws on defining consent in cases involving drugs or alcohol, such cases rarely make it to court. Of the 54 people interviewed by The Globe about their experiences reporting sexual assault to police, alcohol or drugs played a role in 18 cases, about 40 per cent. Fourteen of those 18 were closed without charges.

Unfounded sexual assault rate by police service

Percentage of sexual assault allegations cleared as unfounded (2010-2014)



THE GLOBE AND MAIL

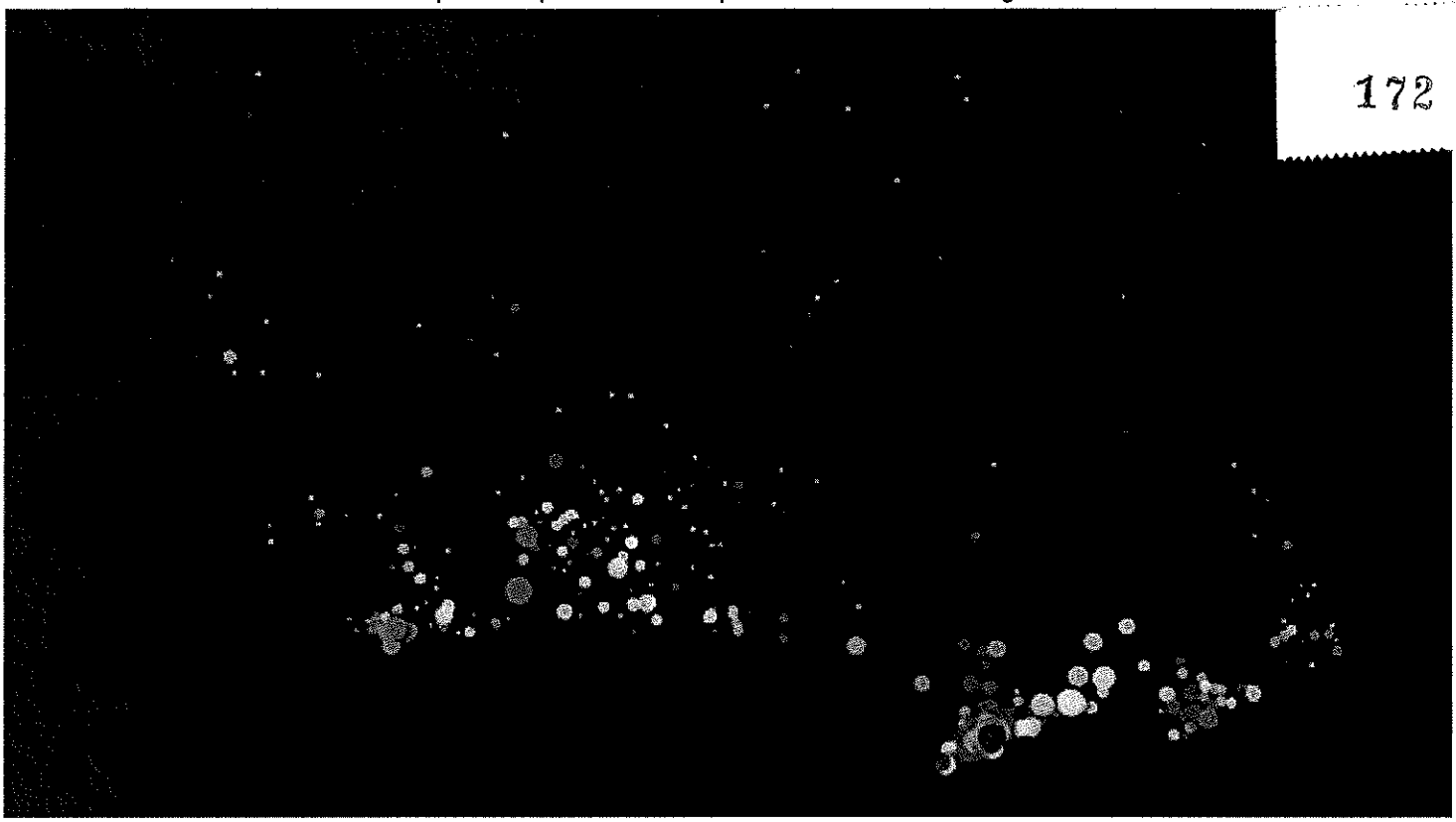
DATA SHARE

How high is the unfounded rate for your community? Use our lookup tool below to find out.

WILL POLICE BELIEVE YOU?

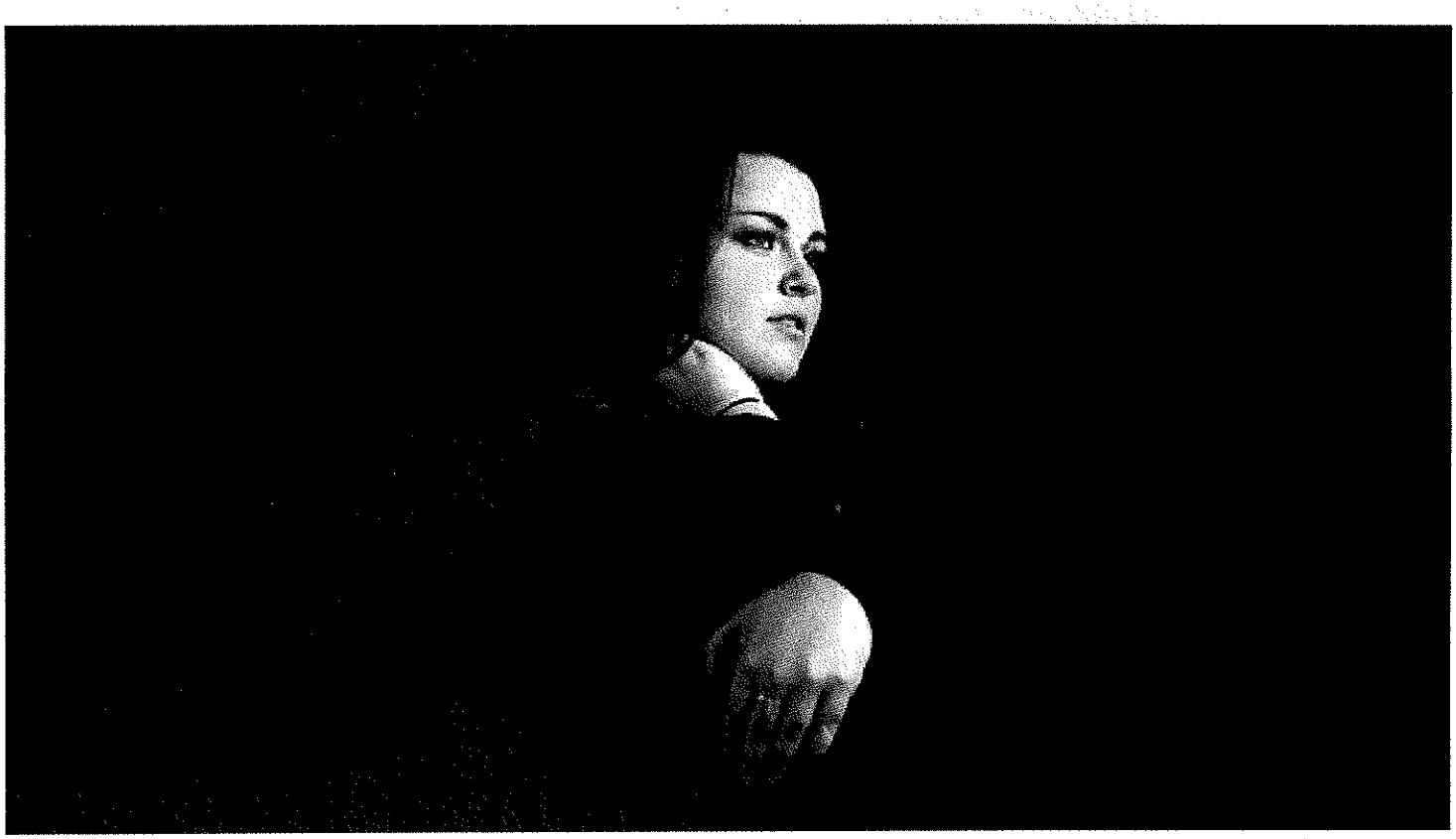
Look up the unfounded sex-assault rates in your area

FIND YOUR POLICE JURISDICTION



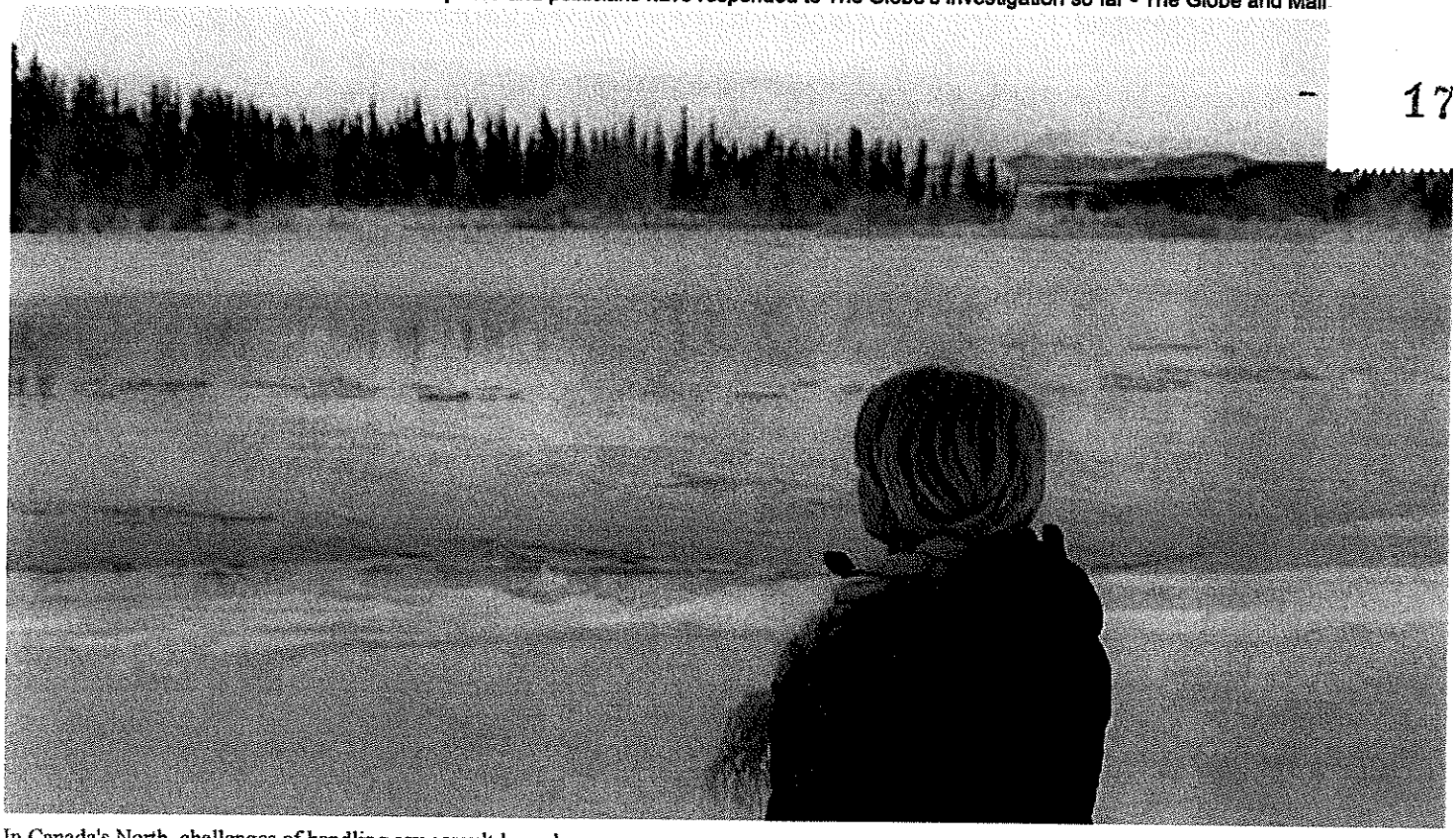
Will police believe you? Find your region's unfounded sex assault rate

Unfounded rates vary drastically depending on where you live. Here's a guide to how they compare.



The problem with consent: Sex-assault cases and intoxication

As many as half of all sexual-assault cases involve alcohol. Yet cases that hinge on questions of consent face an uphill battle.

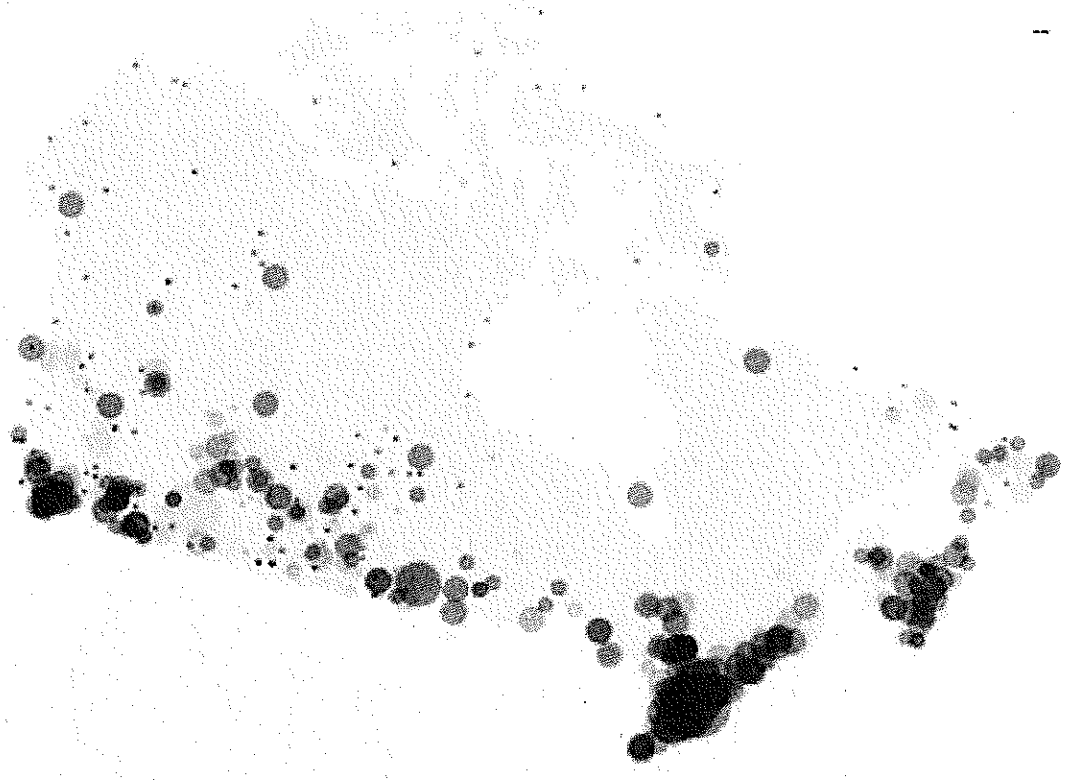


In Canada's North, challenges of handling sex assault loom large

Along with having some of the highest unfounded rates in the country, northern communities face barriers that make it more difficult for both victims and police to deal with complaints, Robyn Doolittle explains.

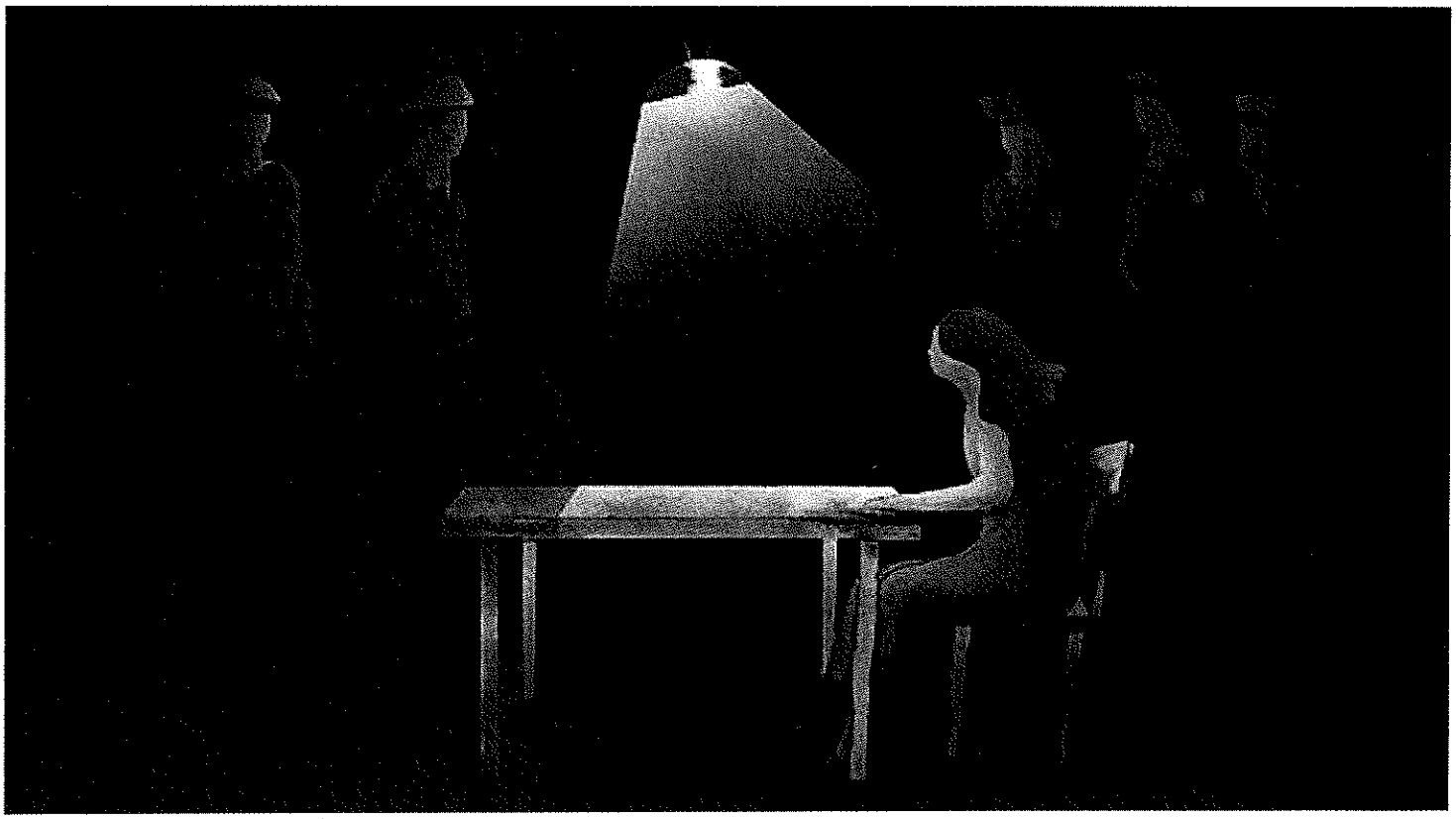
HOW IT WAS RESEARCHED AND REPORTED

For its original investigation, The Globe sent 250 freedom-of-information requests to every Canadian police service. It got replies from 873 police jurisdictions, which represented about 92 per cent of Canada's population. Our journalists spent months analyzing the data and organizing it so Canadians could find out the unfounded rates in their communities. Here's more background on the methodology used.



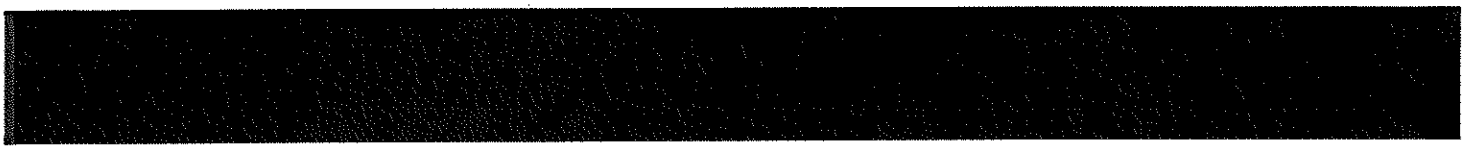
How The Globe collected and analyzed sexual assault statistics

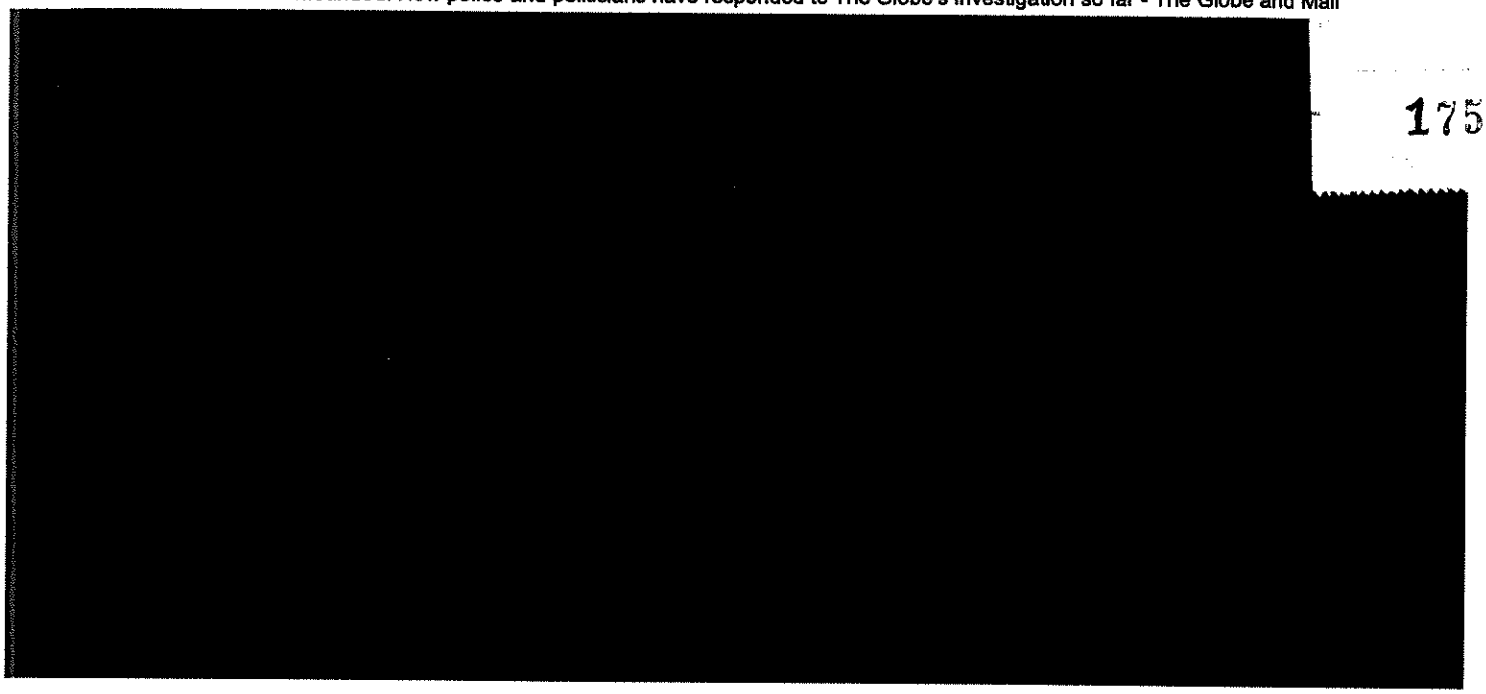
Fourteen years ago, Statistics Canada stopped publishing unfounded rates. Here's how The Globe tried to fill the gaps in the data.



The story behind The Globe's Unfounded series

Robyn Doolittle describes the shocking discovery that led to 20 months of work, scores of interviews and hundreds of freedom of information requests to police forces across the country.





The story behind how Unfounded was reported

7:58

The investigation also included interviews with 54 people who had reported sexual assault to the police. Thirty-six of those people agreed to share their stories publicly; you can read those profiles here.

Of the 36 people who agreed to share their stories of reporting sexual assault to police, 25 had their allegation dismissed before going to court. Eight had a positive experience reporting to police.

THE GLOBE AND MAIL

WHAT EXPERTS SAID SHOULD BE DONE BETTER

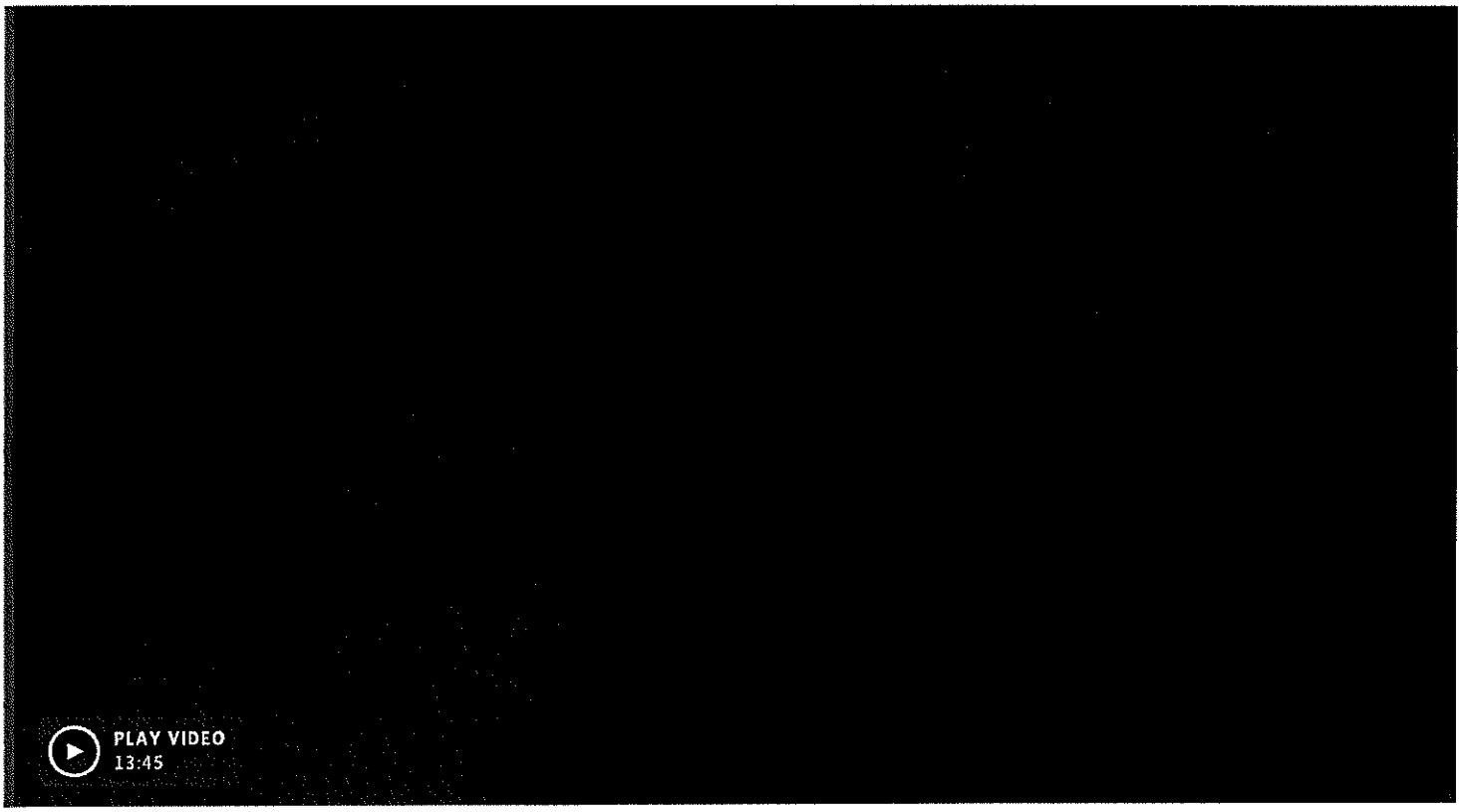
The Globe's Robyn Doolittle spoke with educators, criminologists, trauma experts and lawyers who offered clear ideas about what should be done to address the issues raised by the Unfounded investigation:

- Statistics Canada should release unfounded statistics.
- Police forces should adopt better standardized protocols for how police should handle sex-assault cases.
- Police should be better taught how to interview sexual-assault survivors, such as interviewing them a few days after the incident, when their memories are clearer, instead of immediately after.
- There should be better and more consistent oversight of how police forces deal with sexual assault.

176

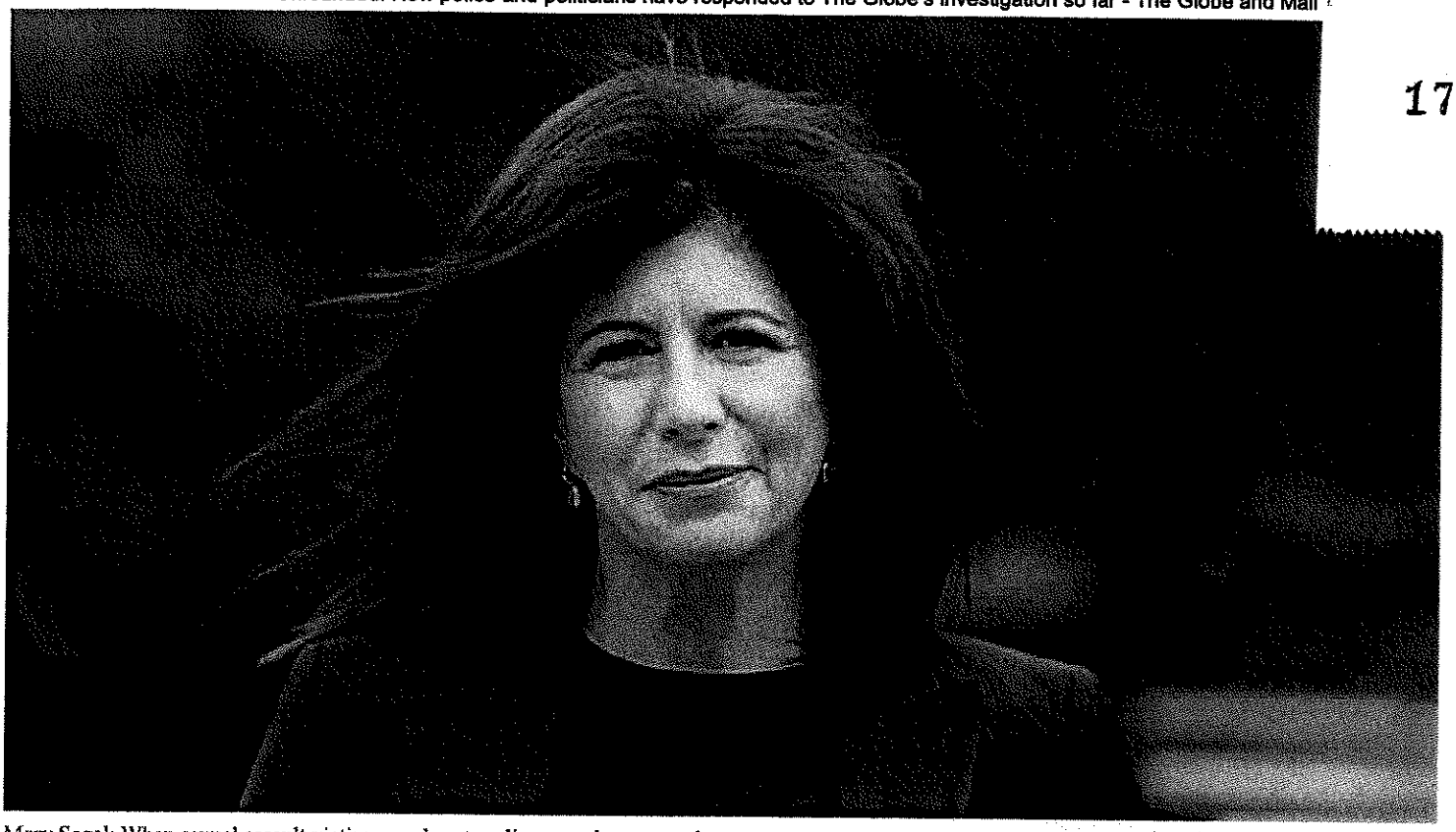
Some advocates are urging Canada to adopt the so-called Philadelphia Model, a 17-year-old initiative in which women's advocates do annual reviews of sexual-assault case files with high-ranking officers. Since adopting that model, the U.S. city has slashed its unfounded rate from 18 per cent to about 4 per cent. Justice Minister Jody Wilson-Raybould has spoken highly of the model, saying at a Justice Department conference in March that "without a doubt, the Philadelphia model is one of the most exciting policing initiatives in this area."

Philadelphia's model was an attractive option to the force in North Bay, Ont., where police are closing an average of 44 per cent of sex-assault cases as unfounded. Police in the community of 59,000 devised a five-year plan to bring in criminology masters students from Nipissing University and implement a policy review. But there's a problem: The force, with fewer than 100 officers, doesn't have the money. Their challenges are emblematic of small cities across the country where unfounded rates are high.



A trauma expert assesses how one woman's sexual assault report was handled by London police

13:46



Mary Segal: When sexual assault victims reach out, police must be prepared

Marcy Segal, a Toronto criminal lawyer, says it has been clear to her for some time that the entire system is failing victims and requires an overhaul.

Brenda Cossman: We must do better for sexual assault survivors. The answer isn't rocket science

The high number of cases deemed unfounded is worrying, and the answer, sexual assault experts know, is simple: Extensive training for police officers.

With reports from Robyn Doolittle, Daniel Leblanc, Patrick White and The Canadian Press

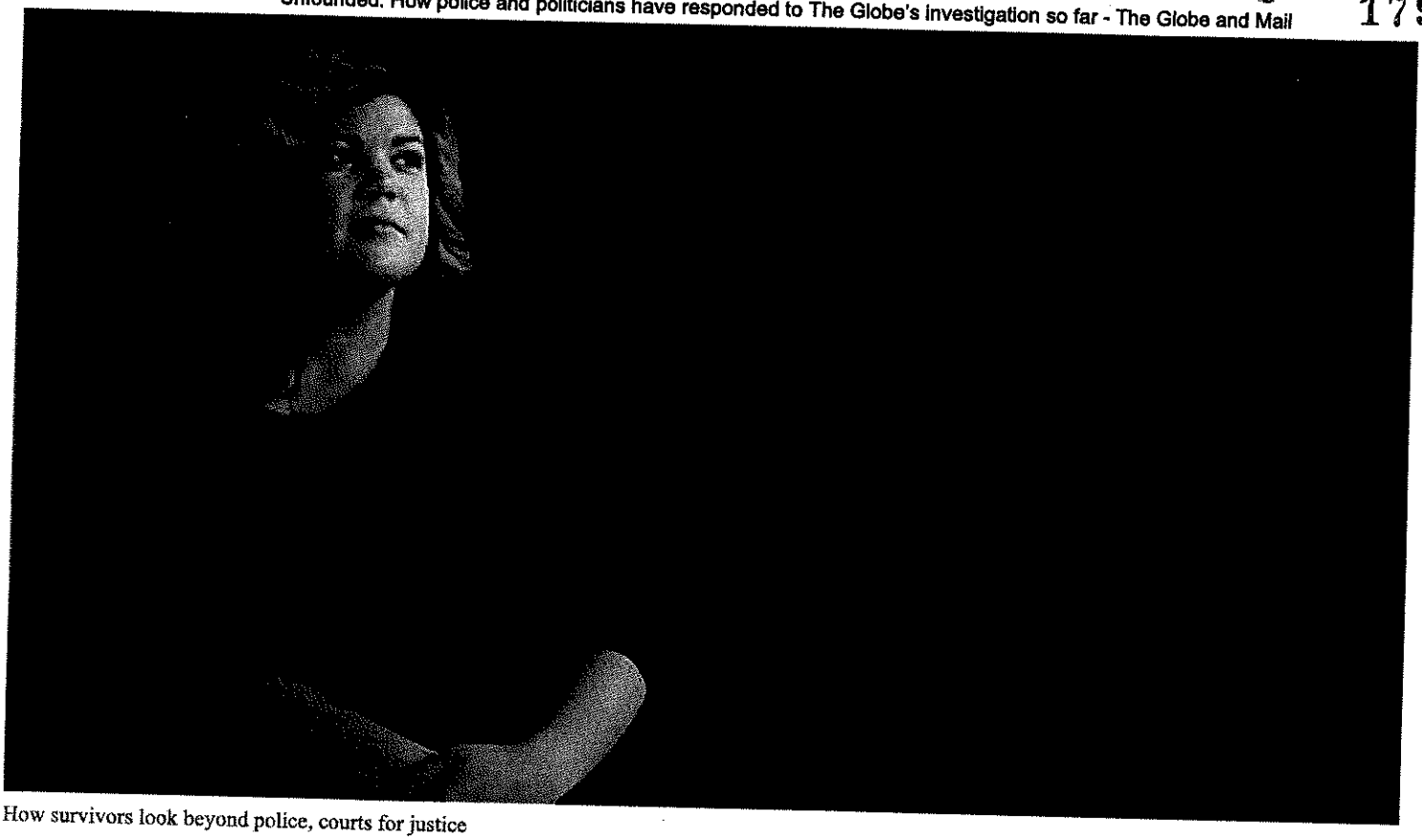
UNFOUNDED: MORE FROM THE GLOBE AND MAIL

Sexual assault cases are distressing. But the forces of opposition are heroic

Advocates for sexual-assault survivors continue to fight the good fight. Maybe some day they'll win.

Editorial: Outdated police practices are hurting victims of sexual assault

Police reviews may help some sexual-assault survivors get belated justice, or at least feel like they are being taken seriously.



How survivors look beyond police, courts for justice

In the face of feeble conviction rates for sexual assault, many believe the courts have failed victims in Canada. As Zosia Bielski reports, they're looking for different roads to justice.

THE GLOBE AND MAIL

After 15-year stoppage, Statistics Canada resumes releasing data on crimes deemed unfounded

180

JACK HAUEN ›
PUBLISHED JULY 22, 2018
UPDATED JULY 23, 2018
10 COMMENTS

On Monday, for the first time in 15 years, Statistics Canada will release data on crime reports deemed unfounded by police, following a nationwide Globe and Mail investigation into how police respond to reports of sexual assault.

The 20-month investigation, Unfounded, surveyed more than 870 police jurisdictions across Canada and revealed that one in five reports of sexual assault were dismissed as baseless or unfounded – a rate far higher than for other types of crime. The report recently won a Michener Award for public-service journalism.

Following the publication of the Unfounded series of stories, Statscan consulted with more than 60 experts and worked with more than 400 police personnel to train forces on the new reporting strategy. Now, cases are defined as unfounded if police can determine that the offence never occurred or was never attempted. Police will no longer classify incidents as "unsubstantiated" and now have new options for classifying unsolved cases.

The Globe investigation also spurred police forces to review more than 37,000 cases, and some agencies have pledged to revamp their approach to policing sexual violence. The federal government pledged $100-million over five years toward a national strategy to prevent gender-based violence, and Statscan made its commitment to resume collecting unfounded data. It stopped collecting it after 2003 due to problems with data quality, including inconsistent police reporting.

"We've tried to make it a little bit clearer for police and a little easier for victims to report," Warren Silver, an analyst at Statscan's Canadian Centre for Justice Statistics, told The Globe and Mail earlier this month. "These new categories will be more transparent because you will [now] know not only if an incident was not cleared but why it was not cleared."

The information will be available at 8:30 a.m. ET through Statscan's *The Daily* at www150.statcan.gc.ca/n1/dai-quo.

TOP STORIES

Activists urge Ottawa to pass Canadian accessibility law before summer

CIBC lowers full-year profit outlook, following flat second-quarter earnings

Canadian police dismissing fewer sexual-assault cases

ROBYN DOOLITTLE >
TORONTO
PUBLISHED JULY 23, 2018
8 COMMENTS

Police dismissed fewer sexual assault allegations as "unfounded" in 2017, after The Globe and Mail revealed that Canadian law enforcement disproportionately dismisses sexual offences as baseless compared with other crimes, new crime data from Statistics Canada show.

At the same time, there was a 13-per-cent jump in the total number of "founded" sexual assaults reported to police – a shift partly explained by the fact that fewer cases were dismissed as invalid, unfounded complaints. Rebecca Kong, the head of the policing services program at the Canadian Centre for Justice Statistics, noted that the broader societal reckoning around sexual violence and harassment likely played a significant role as well.

"There was a lot of attention last year in the media – obviously with Unfounded – and the Me Too campaign and Time's Up. We saw the total [number of sexual assaults] reported to police, both founded and unfounded, increase after October when the Me Too really took hold," Ms. Kong said.

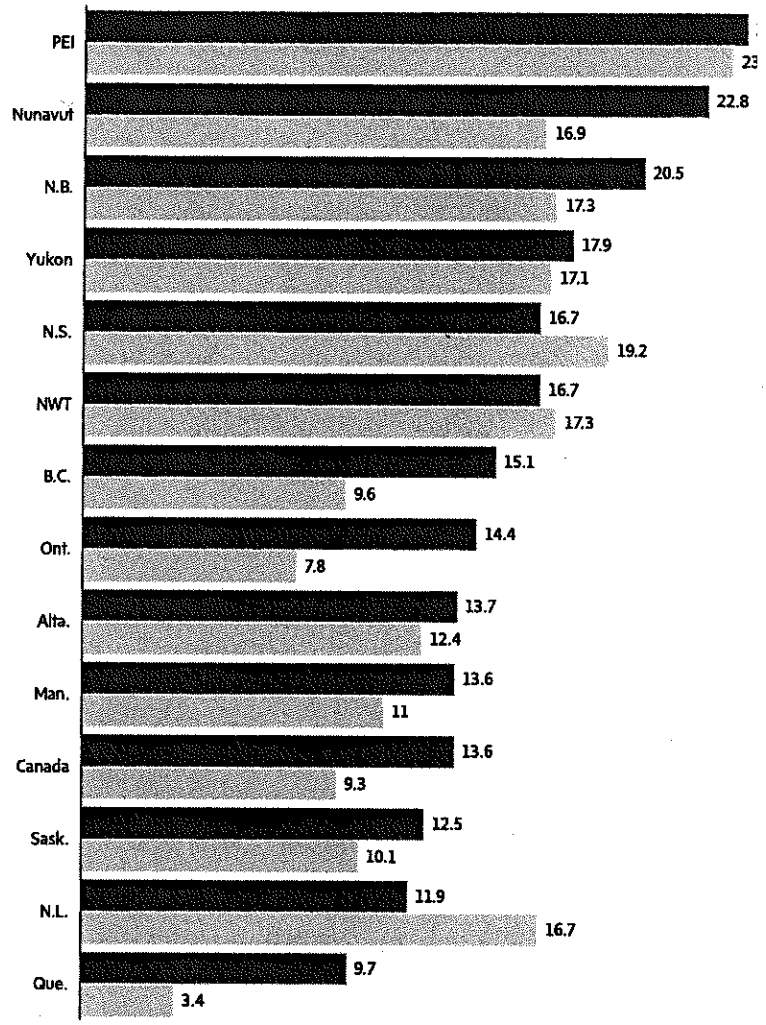
From the archives: Unfounded: Why police dismiss 1 in 5 sexual assault claims as baseless

Read more: Despite law-enforcement agencies pledging to revamp approach to policing sexual assault, it's still status quo at some police services

Read more: What is your police service doing about sexual assault?

Monday marked the first time since 1994 that Statistics Canada included unfounded numbers in its annual crime-data release. The move, one that academics and advocates have been demanding for decades, was announced last spring in response to Unfounded, The Globe's series.

Police-reported incidents of sexual assault and physical assault classified as unfounded, by province and territory, 2017
Per cent classified as unfounded
● Sexual assault ○ Physical assault

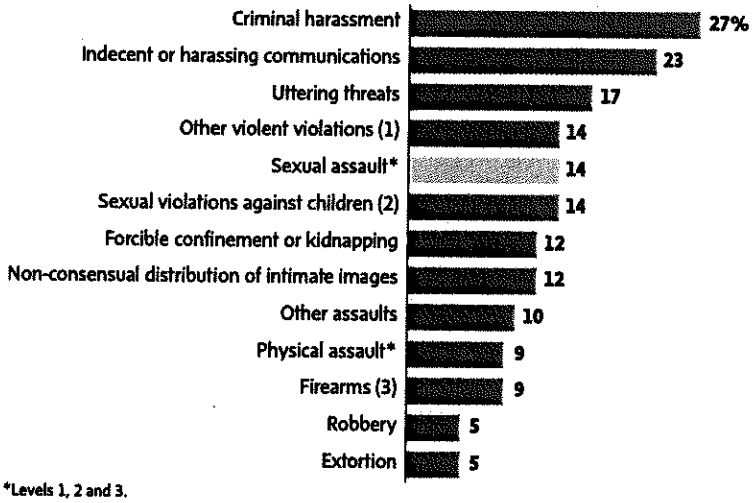


THE GLOBE AND MAIL, SOURCE: STATISTICS CANADA

DATA SHARE

The newly published numbers from Statistics Canada show that in 2017, police discarded 14 per cent of sexual-assault accusations as unfounded – a term that means the investigating officer does not believe a crime occurred. This is down from 19 per cent for the years 2010-14, based on data collected by The Globe as part of a 20-month investigation.

Proportion of police-reported incidents classified as unfounded, selected violent offences, Canada, 2017
Per cent classified as unfounded



*Levels 1, 2 and 3.
1. Criminal Code violations.
2. Excludes sexual assaults against children and youth, which are reported as level 1, 2 or 3 sexual assault.
3. Use of, discharge, pointing.
Note(s):
This chart presents selected violent violations where there were at least 100 incidents classified as unfounded by police in 2017. Data for unfounded incidents are available for 2017 even though inconsistencies in reporting may still exist.
THE GLOBE AND MAIL, SOURCE: STATSCAN

The release also included unfounded rates for other criminal offences, providing a benchmark with which to measure whether sexual-assault offences are more likely to be dismissed as baseless. Over all, 7 per cent of Criminal Code violations were deemed to be unfounded. Robbery (5 per cent), extortion (5 per cent) and physical assault (9 per cent) posed lower unfounded rates than sexual assault. By comparison, criminal harassment (27 per cent), indecent or harassing communications (23 per cent) and uttering threats (17 per cent) were all more likely to be closed as unfounded.

Ottawa criminologist Holly Johnson cautioned that Monday's news gives only a glimpse of the overall picture. The real test about whether police are doing a better job of investigating sexual assault will come several years down the road, when it's possible to see trend lines in the numbers.

"To me, the real measure of success is the percentage of cases resulting in charges. If they're improving investigative procedures then we should see an improvement in charges laid," said Ms. Johnson, who has spent years researching the unfounded issue.

Of particular interest will be watching how the statistics change in police services that have implemented new specialized sexual assault training and new oversight measures after the Globe's investigation, she said.

The Globe's 20-month Unfounded investigation, which launched in February, 2017, revealed that Canadian police were dismissing one out of every five sexual-assault complaints as unfounded, which was nearly twice the rate for physical-assault cases. Further, The Globe determined that police in 115 communities were rejecting at least a third of all sexual-assault complaints, despite the fact that studies in North America, Britain and Australia have shown the false reporting rate for sexual assault is between 2 per cent and 8 per cent.

To try to understand why so many complaints were being dismissed, The Globe also investigated 54 sexual-assault files reported to police and found widespread evidence of investigative missteps, a lack of understanding about Canadian consent law, and an adherence to rape myths and stereotypes in every corner of the country.

The response to the series was swift. Prime Minister Justin Trudeau and various federal and provincial ministers vowed action. The federal government pledged $100-million toward ending gender-based violence, citing The Globe's stories in its funding announcement. At least 100 police services across the country promised to review what has now ballooned to more than 37,000 previously closed sexual-assault files. To date, thousands have been reclassified and more than 400 unfounded files were reopened. Half of the country is now being policed by law-enforcement agencies that are working on outside case reviews inspired by a program in Philadelphia, which gives front-line advocates access to police files to look for signs of bias.

Sunny Marriner, the executive director of the Ottawa Rape Crisis Centre, has been leading the campaign to bring the Philadelphia Model to Canada. She developed a Canadian-version of the program back in 2013. To date, seven services and counting have agreed to pilot the oversight model.

Meanwhile, a working group of high-ranking Ontario police officers is creating its own advocate case-review framework, which it hopes to roll out in 2019. To date, 16 services are involved and the group is hoping to get buy-in from departments across the country.

"There's been fantastic support and no one [in the police community] has dug in their heels. They're coming to us on a regular basis. When they hear about the work we're doing, they're finding they don't have to do it themselves," said one of the group's leaders, Inspector Monique Rollin of Sault Ste. Marie Police Service. "I'm thrilled that the advocates are being allowed into our organizations … They are really the subject-matter experts."

Ms. Marriner is helping the group develop its oversight blueprint, although she pointed out that advocates have already done that work and it has already been implemented in the pilot sites, which include Calgary; Ottawa; Kingston; Stratford, Ont.; Timmins, Ont.; Peterborough, Ont.; and London, Ont.

"In an ideal world, you wouldn't want police setting the terms of their own oversight. That said, there's numerous officers in services around the province and the country who have reached out to us and want to work alongside us and that's what we welcome," she said.

Last April, Statistics Canada announced it would resume publishing unfounded data nearly 25 years after it first stopped releasing detailed information. At the same time, the statistics agency and the Canadian Association of Chiefs of Police said it would update the Uniform Crime Reporting survey, which outlines the specific criteria for crime classification in Canada.

After the Globe series, some police chiefs blamed their high unfounded rates on administrative errors and insufficient coding options to clear out cases that had minimal evidence. To address these concerns, changes were made to the UCR earlier this month, including new case closing options, the discontinuation of the "unsubstantiated" category and a more explicit definition of a "founded" allegation.

The UCR system launched in 1962 after officials recognized that without a standardized method for recording crime data, it would be impossible to assess trends and make evidence-based decisions on priorities.

Several decades ago, Statistics Canada officials began raising concerns that some police services were either misusing the unfounded designation or not recording these cases at all. Because of these inconsistencies, the agency stopped publishing numbers for individual jurisdictions in 1994, rather than force police services to adhere to their own classification protocols.

In 2003, the Canadian Centre for Justice Statistics – a branch of Statscan – released a special report on sexual offences that mentioned that the previous year's national unfounded rate for sexual offences was 16 per cent. This was the last time any official unfounded information appeared from the government. In 2006, the Canadian Centre for Justice Statistics and the Police Information and Statistics formally agreed to stop collecting and publishing unfounded data.

Ms. Kong cautioned that it will take a few years before the agency will have total confidence in the numbers. The 2017 statistics released Monday uses the old UCR criteria, and the coding updates announced earlier this month may not be fully implemented until the end of the year in some jurisdictions.

"We're looking forward to the 2018 and 2019 data," she said.

For near two years a team of Globe journalists, including investigative reporter Robyn Doolittle, dug into the figures and the people behind alleged sexual assault cases which police can deem "unfounded."

THE GLOBE AND MAIL

OPINION

Justice for sexual-assault victims starts with police accountability

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HOLLY JOHNSON
SPECIAL TO THE GLOBE AND MAIL
PUBLISHED JULY 23, 2018
6 COMMENTS

Holly Johnson is associate professor in the department of criminology at the University of Ottawa.

Sexual-assault survivors have a troubled relationship with the police and courts in Canada. Trust has deteriorated to the point where just 5 per cent report to the police. This is not surprising given the poor treatment many receive at the hands of the police and truly abysmal treatment in court.

This is why it is welcome news that after more than two decades, Statistics Canada released unfounded sexual-assault rates.

The data come after a 20-month Globe and Mail investigation published last year which showed that, depending on jurisdiction, between 2 per cent and 51 per cent of sexual-assault allegations are dismissed by police as "unfounded" and do not appear in crime statistics. This sends a powerful message to women that, should they report, there is a very real chance the police will not believe them.

The Globe series has been a game-changer. It has trained a spotlight on this urgent policy issue in a way advocates and researchers, armed with similar data, have not been able to do.

All this attention puts pressure on police to review how they handle sexual-assault cases. Some are partnering with local sexual-assault support centres in a transparent effort to understand and remedy problems while others have committed to closed-door case reviews and others to no review at all. According to The Globe, internal reviews in some police departments with above-average unfounded rates concluded there were no problems with investigation or case classification. Nothing to see here, move along.

Statistics Canada stopped publishing unfounded rates for individual jurisdictions in 1994 because of concerns police were coding inconsistently. Police argue unfounded rates are artificially high because Statistics Canada's Uniform Crime Reporting Survey is missing certain coding options.

Pressured to revise their data-collection strategy, Statistics Canada investigated and found police often relegate sexual assaults to unfounded when they are reported by someone other than the survivor. Such a scenario occurs when survivors do not want involvement with the police, but want to ensure the police receive a report about it. Research shows that protecting other women is a strong motivator for coming forward. It is also important for establishing patterns and possible serial offenders. Other cases are unfounded when survivors did not want to proceed to court, or when police felt evidence would not stand up in court, even when there was evidence of an assault.

The new and improved coding instructs police to "err on the side of belief" and to adopt a victim-focused approach that is

Police are instructed to follow the recommendations from the International Association of Chiefs of Police, which states that all reports should be taken as valid unless evidence proves otherwise.

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This directive is a clear recognition that police may invalidate legitimate sexual-assault complaints unless explicitly instructed not to.

Today, Statistics Canada released unfounded rates for 2017. The rate for sexual assaults was 14 per cent, a slight drop from 19 per cent the previous year (based on data collected in The Globe's investigation). However, it is early days and police departments are just now implementing the new data-collection regime. When inconsistencies are ironed out, we will see how police line up with research showing between 2 per cent and 8 per cent of sexual-assault complaints are actually false.

But simply reducing the unfounded rate does not ensure justice for survivors of sexual assault. Justice will come when investigations are materially improved so that survivors know they will be treated with dignity and respect, cases are investigated thoroughly, charges are laid and suspects prosecuted. Recoding is only the first step toward greater transparency. Unless police invite community oversight from agencies with expertise in sexual victimization, biased investigations and case dismissal may continue, just in another form.

Statistics Canada is to be commended for acting quickly. Yet there is plenty of evidence of troubling police behaviour and a new coding structure may distract us from the real problems. When women are blamed and their cases dropped, the outcomes for survivors are the same, no matter how crimes are recorded.

Many police jurisdictions have launched training for trauma-informed investigation and other victim-centred practices. Some have begun to facilitate third-party reporting through community-based victim services agencies. Greater police accountability and transparency may be possible, but only if the spotlight remains firmly on.

THE GLOBE AND MAIL*

EDITORIAL

Globe editorial: A clearer picture of sexual violence in Canada, at last

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PUBLISHED JULY 25, 2018

3 COMMENTS

Canadian police forces registered a 13-per-cent jump in sexual-assault complaints in 2017, while the rate of complaints categorized as "unfounded" – wherein investigators don't believe a crime has been committed – dropped to 14 per cent, down from 19 per cent four years ago.

More sexual-assault victims, the vast majority of whom are women, are coming forward, and more are being believed by the police. The story, however, isn't so much the numbers themselves as the fact they were reported at all.

This week marked the first time in nearly 25 years that Statistics Canada included an "unfounded" category in its annual crime numbers.

This is in no small part due to Globe and Mail reporter Robyn Doolittle and her newsroom colleagues, who conducted a 20-month investigation that revealed that many police departments were dismissing a disproportionate percentage of sexual-assault complaints as unfounded, largely because of outdated attitudes that led to investigative missteps.

The main source of information in The Globe investigation was data provided by police departments. The decrease in unfounded sexual-assault cases in 2017, and the rise in founded ones, are reminders that accurate and complete data are necessary for making informed and effective policy.

Some methodological gaps remain in Canadian crime statistics, which are heavily dependent on police reporting – the fact Statscan opted to stop reporting unfounded complaints in 1994 was entirely due to administrative lacunae on the part of local police forces – but the latest release represents progress.

Just as encouraging, police in Canada are waking up to their shortcomings. Multiple departments have implemented specialized training for officers who handle sexual-assault cases, and have also adopted oversight measures – including the Philadelphia Model, which gives advocates a window into case files so they can be examined for bias.

On the other hand, sexual assault is still more likely to result in an "unfounded" finding than most other violent criminal offences. Police departments are changing their cultures, but there is a long way to go before they get it right. The data will help tell us how they are doing.

THE GLOBE AND MAIL

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TOP STORIES

WestJet pilot injured by green laser light while approaching Orlando airport

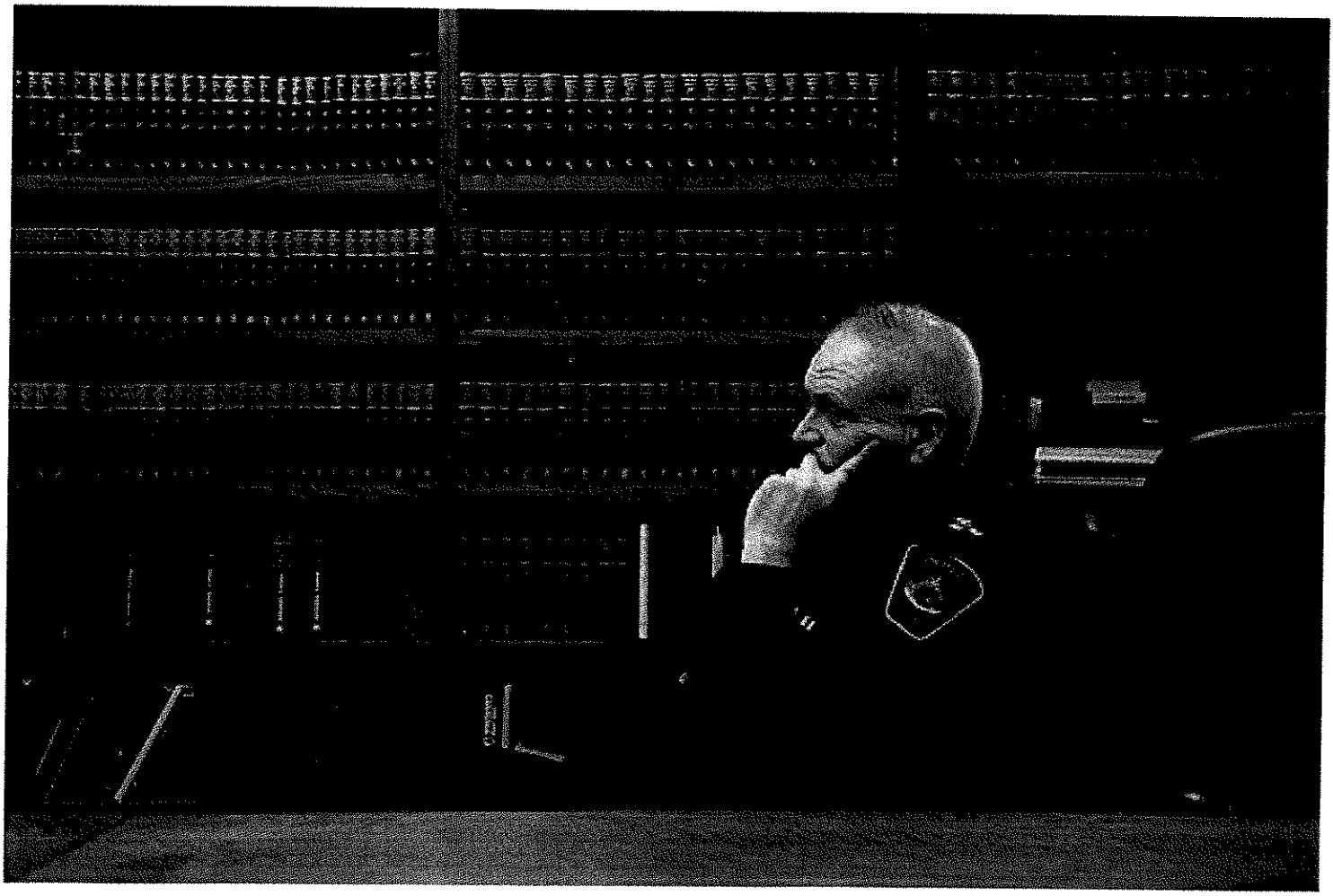
Unfounded rates start to fall in cities across Canada

In the wake of a Globe investigation, police forces in 62 jurisdictions now report double-digit declines in the number of sexual assault cases dismissed as baseless, as wide-ranging reforms begin to show results

ROBYN DOOLITTLE >
TORONTO
PUBLISHED AUGUST 2, 2018
33 COMMENTS

North Bay is a city of about 59,000 people in northern Ontario that, until a few years ago, had one of the worst sexual assault unfounded rates in the country at 44 per cent.

But in the year since The Globe and Mail revealed that Canadian police were disproportionately dismissing sexual-assault allegations as baseless, North Bay has emerged as one of the leaders of reform.



North Bay chief of police Shawn Devine.

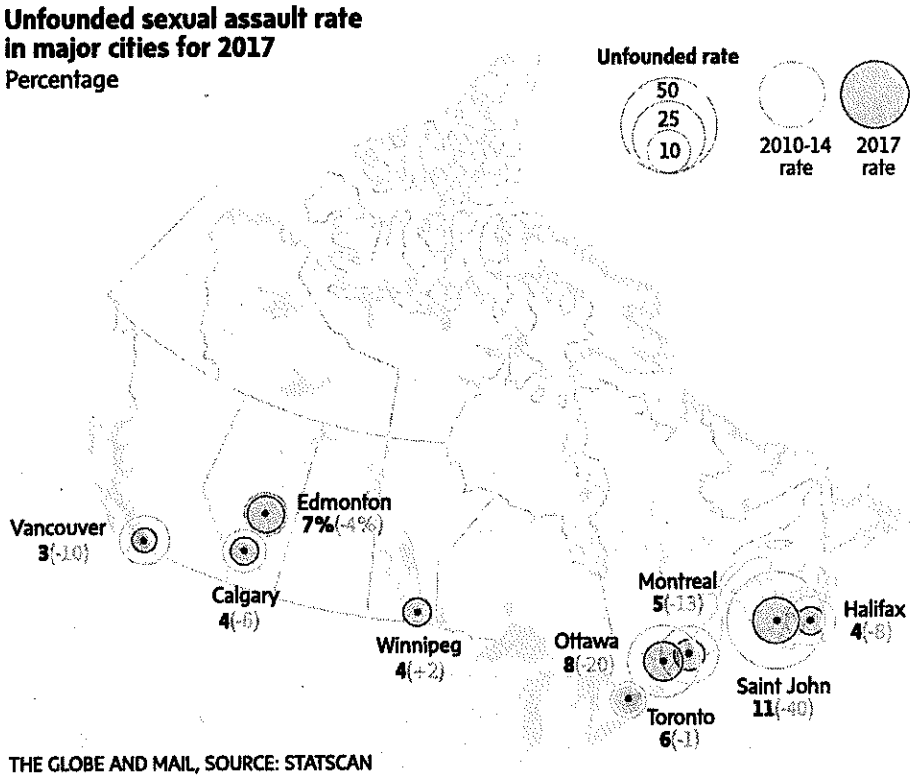
GALIT RODAN/THE GLOBE AND MAIL

According to an analysis of annual crime data released by Statistics Canada last week and numbers compiled as part of a Globe investigation covering 2010-14, North Bay reported one of the sharpest drops in sexual-assault unfounded rates in the country – down to 16 per cent. This was just two percentage points above the national rate in 2017. - 190

The North Bay service was one of 62 Canadian police departments to record a double-digit decrease in unfounded sexual-assault rates after The Globe's Unfounded series, which last year revealed 19 per cent of sexual-assault complaints were being rejected as invalid.

The Globe's series requested data from roughly 175 police services — the numbers change year to year as forces dissolve or are absorbed by others — and of those, 113 provided complete data for all five years enabling statistical analysis. About half showed double-digit decreases, 31 had single-digit decreases, a handful showed no change and 16 showed increases. (There are about 1,117 police jurisdictions in Canada. Municipal forces are each responsible for one jurisdiction, but four agencies — the Royal Canadian Mounted Police, Ontario Provincial Police, Sûreté du Québec, and Royal Newfoundland Constabulary — handle multiple, sometimes hundreds, of jurisdictions.)

Other cities that produced dramatic declines were: Saint John (51 per cent to 11 per cent), Sudbury (33 per cent to 9 per cent), Hamilton (30 per cent to 9 per cent), Halton Region in Ontario (also 30 per cent to 9 per cent) and Laval, Que., (22 per cent to 8 per cent).



THE GLOBE AND MAIL, SOURCE: STATSCAN

Note: The Globe received data from 873 police jurisdictions, which represented 92 per cent of the population, for the years 2010 to 2014.

Last week's release marked the first time since 1994 that the federal statistics agency published detailed unfounded data for individual police services. The figures showed that, on average, Canadian police dismissed 14 per cent of sexual-assault allegations as unfounded, a term that means the officer does not believe a crime occurred. By contrast, only 9 per cent of physical-assault complaints were deemed to be invalid in 2017.

Statistics Canada's decision to resume the collection and publication of unfounded numbers is one that academics have been calling for since the agency ceased the practice over concerns about data quality. At the time, agency officials worried some police services were either not tracking these complaints or not using the code correctly.

The unfounded designation is only to be applied in the rare instance when an investigation has shown a crime did not occur — not if there is not enough evidence to substantiate an allegation. Once a case is classified as unfounded, it no longer counts as a sexual-assault complaint.

The Globe used freedom-of-information requests to collect unfounded statistics from 873 police jurisdictions — this represented 92 per cent of the country — for the years 2010 to 2014. While The Globe's figures cannot be directly compared with the 2017 Statistics Canada numbers because of differences in methodology and data coverage, they are the best benchmark available to measure the impact of the sweeping changes around sexual-assault investigations that most Canadian police services have adopted since the Globe series.

For North Bay's chief, Shawn Devine, the most crucial initiative his police service pursued was external case reviews of sexual-assault complaints.

From the archives: Unfounded: Why police dismiss 1 in 5 sexual assault claims as baseless

Read more: Despite law-enforcement agencies pledging to revamp approach to policing sexual assault, it's still status quo at some police services

Read more: What is your police service doing about sexual assault?

Chief Devine was one of the first police chiefs in Canada to publicly support the then-radical idea of providing rape crisis centre staff with access to raw police files. The advocates would then review the case to see whether officers had been influenced by rape myths and stereotypes or whether there had been any investigative missteps. (Half of Canadians are now living in a jurisdiction where the local police service has adopted some form of advocate case review, which is inspired by a program that has been running in Philadelphia for the past two decades.)

Chief Devine said that it's great that his city's unfounded rate has fallen, but that was never his primary focus. The goal, he said, was to improve the quality of investigations. He believes the unfounded decline is likely a byproduct of several changes, including new coding training and feedback from the reviews.

He cautioned that while there has certainly been progress, the advocate audits have shown that officers would benefit from specialized sexual-assault training, particularly training that addresses new research into how trauma can affect victim behaviour.

The key shift is in understanding that you can't approach a sexual-assault investigation in the same way that you would other types of investigations, Chief Devine said.

"If an interview turns into an interrogation, that's a problem," the chief said. "There's a lot of stuff, even for a small organization like this, where we're probably going to have to address the need for specialized training … but where do we find the time and money?"

Ontario showed one of the biggest unfounded rate drops among the provinces, according to a comparison of The Globe's 2010-14 data with Statistics Canada's 2017 figures.

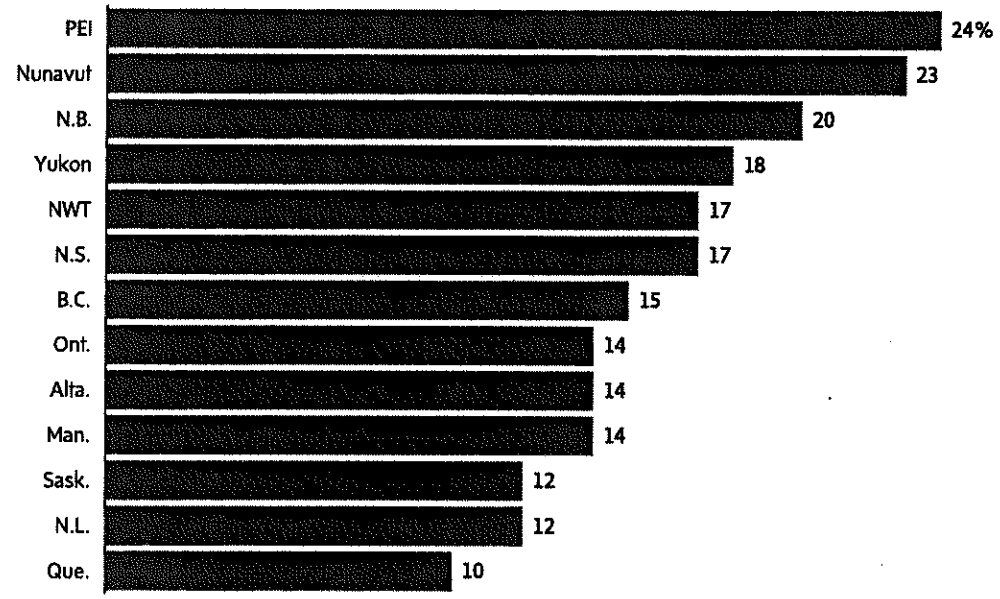
Previously, Ontario's unfounded rate for sexual-assault cases was 25 per cent. The latest numbers put it at 14 per cent. Two other regions showed double-digit drops: The Northwest Territories, which is policed by the Royal Canadian Mounted Police, went from 30 per cent to 17 per cent, while New Brunswick's rate declined 12 percentage points, from 32 per cent to 20 per cent.

New Brunswick previously held the highest rate of unfounded sexual-assault cases in the country. According to the 2017 Statistics Canada figures, Prince Edward Island police services — a mix of municipal forces and RCMP jurisdictions — is

now the highest at 24 per cent. (Because the largest municipal police service in PEI — Charlottetown, which polices about 40,000 people — declined to provide The Globe data for last year's series, it is not possible gauge the province's shift.)

Unfounded sexual assault rate by province and territory

Percentage of sexual assault allegations cleared as unfounded, 2017



THE GLOBE AND MAIL, SOURCE: STATSCAN

DATA SHARE

Jenn Richard is the director of community development at the Fredericton Sexual Assault Centre. She is also the vice-chair of a provincial working group responsible for improving New Brunswick's response to sexual violence.

"I think there is a willingness to change and also a willingness to learn [among police services]," she said. "There was a bit of a steep learning curve at the beginning just understanding what the issues are, understanding what trauma-informed means … I do feel really optimistic."

One of the findings of The Globe's Unfounded series was that rates fluctuated — sometimes wildly — between jurisdictions, even jurisdictions located in similar geographic areas and with similar demographics. For example, in Fredericton, a city of about 60,700, The Globe found that 16 per cent of sexual-assault files were being dismissed as unfounded (today, it's 13 per cent). But just an hour south in Saint John, a city of about 70,800, the unfounded rate was 51 per cent (it has since dropped to 11 per cent).

Staff Sergeant Tony Hayes, who works in media relations with the Saint John Police Force, attributed the initially high number to a coding error.

After police conclude a sexual-assault investigation, they give it a closure code to signify the outcome for statistical purposes — such as cleared by charge. This is part of the Uniform Crime Reporting (UCR) survey, which police services use to report data back to Statistics Canada.

As part of its plan to resume collecting and publishing unfounded numbers, the federal statistics agency and the Canadian Association of Chiefs of Police said it would update its UCR classifications. Those changes, which were announced in July and include new case closing options and a more explicit definition of a "founded" allegation, are not reflected in the latest Statistics Canada data release. However, after The Globe's series, police services were reminded of the correct use of the unfounded code — that the allegation is baseless and no crime occurred.

One large police service that continued to have a high unfounded rate was the Ontario Provincial Police, collectively responsible for policing 2.3 million people. The Globe found OPP officers were closing 34 per cent of sexual-assault cases as

unfounded. In 2017, the number fell to 26 per cent — still significantly higher than the national average of 14 per cent and drastically higher than the false reporting rate, which studies show is between 2 per cent and 8 per cent.

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The rate remains high despite the fact that the OPP has been among the more aggressive police services in terms of policy change. The agency has rolled out new trauma-informed training, created a team of specialized sex-assault officers and implemented advocate case review in each of its regions.

Detective Inspector Karen Arney heads up the OPP's newly formed unit of five detective sergeants who specialize in sexual-assault cases. She said that many of the biggest reforms made within the agency didn't take effect until later in the year — her team only got started in January of 2018, for example. This, she says, is why the unfounded rate didn't move much.

So far in 2018, internal OPP statistics show the unfounded rate is below 20 per cent. As the service continues to implement feedback from the case review committees and once the new UCR coding options are available, the numbers will come down even more, she said.

One of the jobs of Det. Insp.'s Arney's team is to take part in the review committees. If a problem is identified, her officers send the case back to the initial officer.

"Sometimes this will be because more work needs to be done or we'll be providing recommendations … there's a lot of officers doing some great work out there, but of course, there's always room for improvement," she said. "As a police officer, you want to know: who, what, when, where, how, but sometimes you need to step back and think about if the victim is being treated respectfully."

Data analysis by Chen Wang, Laura Blenkinsop, Jeremy Agius and Michael Pereira

THE GLOBE AND MAIL

Unfounded case ends with conviction 19 years after police dismissed sexual-assault complaint

ROBYN DOOLITTLE ›
PUBLISHED SEPTEMBER 20, 2018

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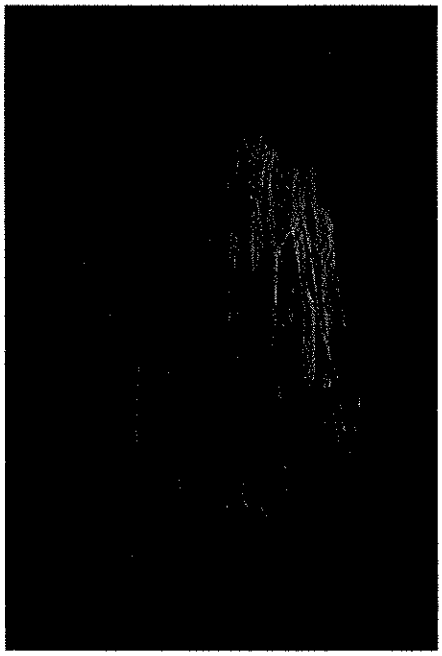

The identity of the complainant in the Ottawa case is protected under a publication ban, but The Globe and Mail can identify her as 'L.'

JENNIFER ROBERTS/THE GLOBE AND MAIL

An Ottawa man who raped a 12-year-old girl and then initially got away with it after police dismissed the file as an unfounded allegation has been convicted of sexual interference in the wake of a Globe and Mail investigation.

Brian Lance, 46, was sentenced to five years in prison last week after pleading guilty to the sexual offence.

His arrest came after an Ottawa police surveillance team collected the accused's DNA off a discarded cigarette. The complainant had become pregnant as a result of the continued abuse and the DNA collected linked him to the child. It was a dramatic conclusion to a case that has spanned two decades and one that the complainant's lawyer, Blair Crew, said was one of the most remarkable days of his legal career.

"It's the first time that I've ever seen an offender in an unfounded case being brought to justice. It was astounding," said Mr. Crew, who has been a leading voice on the unfounded issue and who has counselled at least 100 women who have reported sexual assault.

This case is one of more than 400 unfounded sexual-assault files that have been reopened in response to The Globe's investigative series. Most recently, on Thursday, the Canadian Armed Forces announced that after a review of 179 military police sexual-assault cases, 23 unfounded complaints required further investigation.

In the past year and a half, at least 100 Canadian police services have audited a combined 37,272 sexual-assault files. It's unclear how many reopened cases have resulted in charges, but one other complainant featured in the Unfounded series has told The Globe that her case was reopened and charges have been laid against the accused.

Related: Unfounded rates start to fall in cities across Canada

In the recently decided Ottawa case, the complainant's identity is protected under a publication ban, but The Globe can identify her as "L." In speaking after Mr. Lance's plea, L said that while she is grateful he has finally faced legal consequences, it doesn't change the fact that his actions derailed her life.

Mr. Lance began sexually abusing L when she was 12 years old and he was 26.

In February, 1998, Mr. Lance raped L for the last time when she was 13, resulting in the pregnancy. As she was so young and

L, whose home life had not always been stable, was forced to give the baby up for adoption. The once vibrant and cheerful student became withdrawn. School records show her grades plummeted. L spiralled. She ended up in a youth jail.

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According to an agreed statement of facts prepared by the Crown and defence ahead of Mr. Lance's plea, the police became involved after L told a worker from the Children's Aid Society that Mr. Lance was the father of her baby. In March, 1999, the Ottawa Police Service opened an investigation. In a video of L's interview with police, the teen, then 14, can be seen squirming uncomfortably and occasionally giggling nervously as the middle-aged, male detective pressed her for details of the sexual acts.

When the detective later questioned Mr. Lance, the accused claimed he couldn't be the father because he was sterile. The officer apparently took Mr. Lance at his word, without collecting any proof. Police made no effort to obtain a DNA sample from the child or Mr. Lance.

The detective also interviewed L's mother, who relayed the story that L had told her about the boy from school. This called into question the "veracity" of L's allegation against Mr. Lance, the agreed statement of facts said.

The file was closed as unfounded, meaning the detective believed the allegation to be baseless or false.

The detective told L's mother later on that he made the decision based on the fact that Mr. Lance could not father children and that L had giggled while being questioned, which he found to be suspicious. (The Globe has reached out to the now-retired detective on numerous occasions for comment and received no response.)

When The Globe first published details of L's story in February, 2017, Ottawa police Inspector Jamie Dunlop was quoted as saying that since L's initial complaint, there is a better understanding around the ways victims deal with trauma. "Laughter is common. Absolutely right. Was that as well known 20 years ago? I don't know. We're doing a much better job now of preparing investigators."

Shortly after The Globe story, Ottawa police reopened L's case.

Officers focused on the DNA element. L's now grown child agreed to submit a DNA sample to police. From there, a surveillance team trailed Mr. Lance and collected a discarded cigarette.

On June 21, 2017, Mr. Lance was charged with sexual interference, invitation to sexual touching and sexual exploitation of a young person. On Sept 10, 2018, he pleaded guilty to the first offence in an Ottawa courtroom. The remaining charges were withdrawn. Mr. Lance will be eligible for parole after serving one-third of his five-year prison sentence. He will also be included on a sexual-offender registry for the next 20 years.

Had Mr. Lance proceeded with a trial, he could have faced a longer sentence. In reaching a plea, the accused spared L from having to go through a cross-examination in open court, Mr. Lance's lawyer, Kate Irwin, told The Globe.

"It was something he took very seriously from the beginning," Ms. Irwin said. "Part of what was taken into consideration was the fact that it was a guilty plea and that he expressed his remorse about what happened almost 20 years ago."

According to those in the courtroom, Justice Trevor Brown told Mr. Lance that had it not been for the persistence of L, he would have been gotten away with his crime.

In November, 2015, Mr. Crew brought L's case to Ontario's Criminal Injuries Compensation Board, which can give financial awards to victims of violent crime. It is not a criminal proceeding and there would have been no consequences for Mr. Lance if he had let L state her case unchallenged. Instead, Mr. Lance showed up to dispute L's testimony.

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"He tried to prevent me from accessing funding for counselling," L said. "He's sorry for getting caught. … There was no acknowledgment of the suffering that I've been through and the mental-health issues, the suicidal thoughts. I had a complete breakdown."

The board found L to be "clear, forthright and credible," while Mr. Lance appeared "vague and inconsistent."

L, who is now 33, was awarded $28,000.

The following year, she graduated from university.

TAB 3

APPENDIX "A"

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE	)	THE	DAY
	)		
JUSTICE	)	OF	2019

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

O R D E R

THIS MOTION made by the Information and Privacy Commissioner of Ontario (the "IPC") for an order granting the IPC leave to intervene in this appeal as a friend of the court was heard this day at the Court of Appeal for Ontario at 130 Queen Street West, Toronto, Ontario, M7A 2N5.

ON READING the Motion Record of the IPC and the consents of the Respondent (Appellant in Appeal) Attorney General of Ontario, the Applicant (Respondent in Appeal) Jeffrey Bogaerts and the Proposed Intervenor IPC all filed,

THIS COURT ORDERS that:

1. The IPC is granted leave to intervene in this appeal as a friend of the court,
2. The IPC shall not expand the record in the appeal, including by adding materials that would appropriately be the subject of a motion for fresh evidence,
3. The IPC leave to file a factum not exceeding 15 pages by June 19, 2019 or such other time as is agreed by counsel and acceptable to the Court,
4. Both the Respondent (Appellant in appeal) and the Applicant (Respondent in appeal) leave to file material responding to the IPC's factum by July 19, 2019 or such other time as is agreed by counsel and acceptable to the Court,
5. The IPC leave to make oral argument on the hearing of the appeal not exceeding 15 minutes,
6. The parties will agree to accept service of their respective materials by electronic mail, with paper copies to be provided upon request,
7. The IPC neither seeks nor will be liable for costs in connection with the appeal,
8. There be no costs of this motion, and
9. Such further and other order as this Honourable Court may deem just.

_____

THE ATTORNEY GENERAL OF ONTARIO - and - **JEFFREY BOGAERTS**

Respondent
(Appellant in Appeal)

Applicant
(Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

O R D E R

INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO
Suite 1400, 2 Bloor Street East
Toronto, ON M4W 1A8

Stephen McCammon, LSO #37502R
Tel.: (416) 326-1920
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Lawyer for the Moving Party
Information and Privacy Commissioner of Ontario

TAB 4

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant in Appeal)

- and -

JEFFREY BOGAERTS

Applicant
(Respondent in Appeal)

CONSENT

The Respondent (Appellant in Appeal) Attorney General of Ontario, the Applicant (Respondent in Appeal) Jeffrey Bogaerts and the Proposed Intervenor Information and Privacy Commissioner of Ontario hereby consent to an order issuing in the form annexed hereto as Appendix "A".

per

May 23, 2019

Daniel Huffaker
Lawyer for the Respondent (Appellant in Appeal)
Ministry of the Attorney General of Ontario

per

May 23, 2019

Kurtis R. Andrews
Lawyer for the Applicant (Respondent in Appeal)

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May 23, 2019

Stephen McCammon
Lawyer for the Proposed Intervenor
Information and Privacy Commissioner of Ontario

THE ATTORNEY GENERAL OF ONTARIO - and - **JEFFREY BOGAERTS**

Respondent
(Appellant in Appeal)

Applicant
(Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

CONSENT

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Lawyer for the Moving Party
Information and Privacy Commissioner of Ontario

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THE ATTORNEY GENERAL OF ONTARIO - and - **JEFFREY BOGAERTS**

Respondent
(Appellant in Appeal)

Applicant
(Respondent in Appeal)

Court File No. C66542
Superior Court File No. 749/13

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT: Toronto

MOTION RECORD OF THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

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