Appendix A
Expert Report on Crime, Criminal
Justice and the Experience of Black
Canadians in Toronto, Ontario
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1. Introduction

We have been asked by counsel for Mr. Morris to provide evidence and analysis of research relating to the existence and impact of Anti-Black racism in Canadian society generally and in the Toronto region in particular. The aim of this report is to assist the Court with understanding the conditions under which many Black people reside, receive education and employment, experience crime and the criminal justice system, and suffer from various forms of discrimination. When read in combination with Ms. Sibblis' analysis of Mr. Morris' life experiences, this report may also assist the Court in gaining a nuanced understanding of the social conditions and context that may have contributed to his involvement in the offence for which he is being sentenced. We have been apprised by counsel for Mr. Morris, Gail D. Smith, of the underlying facts related to Mr. Morris' finding of guilt. We have considered these facts in order to focus our contextual and social analysis.

2. Our Analysis in Brief

The over-representation of young Black men in the criminal justice system is increasingly acknowledged by scholars and policy-makers alike as an important social issue. Over the past several decades in Ontario, various task forces and commissions have drawn attention to the social factors known to increase involvement in crime and have identified evidence of systemic discrimination in key social institutions -- from child welfare and education -- to the operation of the justice system itself.

The present circumstances of Black Canadians have deep historical roots. The institution of slavery and of legalized segregation in Canada formed the basis for Black Canadians' initial relationship with the state and its people. While slavery and segregation served to underpin early economic and political structures, the ideas and assumptions on which they were based shaped the nature of social relations. As evidenced by public opinion polls, some of these beliefs and ideas are still present in the minds of Canadians -- particularly those associating Black people with crime and violence. Indeed, racially prejudicial attitudes remain commonplace among Canadians. The continued existence of various forms of institutional racism that affect the lives of Black Canadians is also underscored by the anti-racism initiates recently launched by the City of Toronto and the Government of Ontario.

For this reason, understanding -- and redressing -- criminal justice decisions lies in the social context where young Black men suffer racism, discrimination, and marginalization. It is impossible to understand the offending behaviour of young Black Canadians and their overrepresentation in the criminal justice system, without a broader consideration of the Black experience in Canada, past and present.

3. Anti-Black Racism in Ontario

HISTORICAL RECORD:

Colonialism and slavery structured Black Canadians initial relationships with the state and its institutions. This legacy continues to impact upon the lives of Black people in Canada, Ontario and Toronto.

People of African descent have a long history in Canada and have played an integral part in the formation of the nation. The first documented person of African descent in Canada, Mathieu Da Costa, served as a translator to French and Dutch explorers as early as 1609 (Winks, 1997). Black people were subsequently brought to Canada as slaves in a practice that lasted from the early 17th century until it was abolished in 1834 (Ibid). Many Blacks also arrived in Canada, and particularly Ontario, through the Underground Railroad, as fugitive slaves from the United States (Maynard, 2017). Most of Ontario's Black settlements were located in the Southern parts of the province in

and around the Windsor, Chatham, London, St. Catherines and Hamilton areas. Others formed small groupings in Toronto and outside of Barrie, Owen Sound and Guelph. These closely concentrated Black communities served as a buffer against prejudice and discrimination from the White population. The historical record suggests that Black people in Canada were generally treated with hostility and disdain.

The fact that at least six of the first sixteen legislators of Upper Canada held slaves, provides insight into how early Canadian settlers viewed the Black population. As the institution of chattel slavery was predicated on the idea that the slaves were not human beings, it is reasonable to suggest that the initial experience of Black people in Canada was one of second class citizenship. Indeed, after slavery was abolished, Blacks experienced segregation (both legal and de facto) in education, employment, housing and other spheres of social life (Henry and Tator, 2005)1. These early experiences served to put Canada's Black population at a severe economic and political disadvantage, while simultaneously privileging White Canadians (Wortley and Owusu-Bempah, 2011). This history has also set the stage for the experience of more recent Black immigrants by creating a framework of anti-Black racism that continues to express itself across the various facets of Canadian society.

Canada, like many other Western nations, continues to carry the heavy burden imposed by a legacy of colonialism. As Morgan (2016) notes, a key feature of the experience of Black Canadians has been the simultaneous erasure of the contributions that Black people have made to this country along with the discrimination they have faced while making these contributions. The participation of Black Canadians in military service, politics, educational reform, and entrepreneurship goes largely unmentioned in the media and is almost completely omitted from school curricula. At the same time, the full extent of the discrimination experienced by Black people -- from slavery and segregation to the interpersonal violence experienced by the victims of hate crimes today -- remains under-reported (Henry & Tator, 2005; Maynard, 2017. Morgan (2016) is correct in emphasizing that the erasure of Black accomplishments alongside the failure to acknowledge Canada's colonial legacy contributes greatly to the perpetuation of anti-Black racism. Without a clear historical contextualization of Black disadvantage, the under-achievement of Black students, Blacks' over-representation among the unemployed, and their increased presence within correctional facilities is easily explained by reference to stereotypical assumptions about Black work ethic, the nature of Black families, and Blacks' supposed innate propensity for crime and violence (James, forthcoming; Owusu-Bempah, 2017).

Nonetheless, the continued presence of various forms of racism2 and discrimination in Canadian society has both been extensively documented by scholars and acknowledged by government commissions and task forces dating back several decades. In Ontario, clear evidence of government concern about anti-Black racism dates back to the 1980s and is evidenced most recently with the formation a provincial Anti-Racism Directorate in 2016, which has anti-Black racism as one of its main foci. Likewise the 2016 Toronto Action Plan to Confront Anti-Black Racism provides evidence of similar concern in the province's largest municipality and home to the greatest number of Black Canadians. The recent establishment of these anti-racism initiatives in Ontario reinforces the fact that Black people in Canada, regardless of place of birth, or length of time in the country, continue to face unique challenges that influence their experiences and life chances. The following is a summary list of Ontario government anti-racism initiatives:

*Provincial Advisory Committee on Race and Ethnocultural Relations (1987)

*Anti-Racism Secretariat (1992)

*Stephen Lewis Report on Race Relations in Ontario (1992)

*Amendments to the Education Act (1992)

*Commission on Systemic Racism in the Ontario Criminal Justice System (1995)

*The Review of the Roots of Youth Violence (2008)

*Ontario's Equity and Inclusive Education Strategy (2009)

*Accepting Schools Act (2012)

*Anti-Racism Directorate (2016)

*Toronto Action Plan to Confront Anti-Black Racism (2016)
The myriad initiatives, accompanying reports and lengthy lists of recommendations mean little, however, if they have limited influence on the actions of key decision makers. To help contextualize the experiences of young Black men in the criminal justice system, and to outline the facts that inform our opinion, we outline the nature and extent of the discrimination, marginalization and exclusion which they experience across various institutions and areas of social life in Ontario today. We begin by looking at what it feels like to be a young Black man in this context.

4. Black Masculinities

RESEARCHERS HAVE FOUND:
Youth subcultures tend to reinforce masculine characteristics associated with violence, dominance, and homophobia. These traits or characteristics may be overemphasized by Black males for whom acceptable means of displaying masculinity are blocked, and for whom experiencing racism is a daily reality.
It is generally accepted that Canadian society is built on the values of liberal individualism -- namely, that individuals act out of their own free will and that their success or failure is because of the choices they have made or the risks they have taken. In this context, whatever is achieved is portrayed as more related to an individual's own efforts than to the social, economic or political context in which they exist as racialized, marginalized or minoritized individuals. Boys and men who fail to meet these expectations are said to perform "subordinate" forms masculinity. Indeed, scholars submit that there is a link between social marginalization and boys' and men's violent behavior (Groes-Green, 2009; Messerschmidt, 2000).
According to Messerschmidt (2000), in addition to competitive individualism and aggressiveness, men generally perceive violence as an appropriate reference for constructing their masculinity and as a means of mediating their relationships with other people. To them, violence -- which over time becomes normalized -- is thought of as a "masculine resource" that serves in their affirmation and shields their vulnerabilities. In some cases and in some contexts, men's orientation to aggression and violence as forms of their masculinity are connected to their responsibilities to provide for (i.e. being "bread-winner") and "protect" their families (see Groes-Green, 2009; Hope, 2010). Connell and Messerschmidt (2005) also write of "protest masculinity" which they define as "a pattern of masculinity constructed in local working-class settings, sometimes among ethnically marginalized men, which embodies the claim to power typical of regional hegemonic masculinities in Western countries, but which lacks the economic resources and institutional authority that underpins the regional and global patterns" (pp. 847--848).
As Connell (2005) points out, youth subcultures also tend to reinforce masculine characteristics associated with violence, dominance, and homophobia. These traits or characteristics may be overemphasized by Black males for whom acceptable or positive means of displaying masculinity are blocked, and for whom experiencing racism is a daily reality (Goff et al., 2012). Whereas many White men are afforded the opportunity to affirm their masculinity by socially acceptable means, a decent-paying job in the legitimate labour market, for example, these avenues are blocked for many Black men, particularly those living on the margins of our society. As Majors and Billson (1992) suggest:

Toughness, violence, and disregard for death and danger become the hallmark of survival in a world that does not respond to reasonable efforts to belong and achieve [to be a good man]. The frustration that inevitably wells up from believing in a role that one cannot fulfill effectively spills over into other ways of proving masculinity: being cool, being tough, and sinking deeper and deeper into the masking behaviors that remove the sting of failure (Majors & Billson, 1992: 34).
Available data indicate that serious violence is concentrated within Toronto's Black communities. Gartner and Thompson (2004: 33), for example show that between 1992 and 2003, the homicide rate for Black Torontonians (10.1 murders per 100,000) was more than four times greater than the city average (2.4 murders per 100,000). Further analysis demonstrates that young Black men are particularly vulnerable. Indeed, whereas Black males account for only 4 percent of Toronto's population, in 2007, they represented nearly 40% of the Toronto's homicide

victims. Thus, Black males had a homicide victimization rate of approximately 28.2 per 100,000, compared to only 2.4 per 100,000 Toronto's population as a whole (Wortley 2008 in Owusu-Bempah and Wortley, 2014: 294). Likewise, survey data demonstrate that Black youth in Toronto report higher levels of violent offending and violent victimization than youth from other racial groups. For example, 53% of Black students who participated in the 2000 Toronto Youth Crime and Victimization Survey indicated that they had been involved in three or more fights in their lifetime, compared to 39% of white students, 32% of Asian, and 28% of South Asian students (Tanner and Wortley, 2002 in Owusu-Bempah and Wortley, 2014: 296).3

The centrality of danger and violence in securing masculinity among Black urban poor men is captured well in the work of Anderson (1999). Anderson suggests that exerting violence and aggression, or at least exhibiting the potential for violence and aggression, is key to gaining respect within structurally disadvantaged communities. Violence may also be seen as an accepted method of dispute resolution for individuals who subscribe to "street" oriented subcultural norms, and view the police and criminal justice system as an oppressive institution, unable or unwilling to serve as a meaningful resource. Both the marginalization of Black men, and the criminalization that results from it, influence how they come to view themselves, and as a result, how they navigate the world in light of the opportunities (or lack thereof) afforded to them.

In the case of Black youth, numerous scholars have written on how schooling and other social institutions fail to provide them with the support and education needed for success and effective participation in society (Dei & Kempf 2013; James 2012a; 2009; Tecle & James 2014). A web of negative stereotypes, which operate to disadvantage Black children, are sustained by the very institutions whose purpose is to foster healthy development from childhood into adulthood -- and all in the context of a "liberal" society which celebrates individual merit and achievement. We look at those institutions in the next two sections, starting with child welfare followed by education.

5. The Experiences of Black Children and Youth within the Child Welfare System

KEY FACTS:

*Black Canadians comprise 8.5% of the population of Toronto; their young represent 40.8% of children in care.

*Children in care are more likely to come into contact with the youth justice system than they are to graduate from high school.

Racism and poverty have been credited with fuelling the disproportionate representation of Black Canadian children in Ontario's welfare system (Fallon et al., 2015). Although Black Canadians comprise only 8.5% of the population of Toronto, their young represent 40.8% of children in care, according to data released by the Children's Aid Society of Toronto (OACAS, 2016: 4).

Concerns about Black Canadians' experiences with Ontario's child welfare system have been raised by service users, advocates, and community partners and the media for decades (OACAS, 2016; OHRC, 2018). These concerns revolve around increased levels of surveillance that target Black families and result from widely-held, yet often unconscious, beliefs that Black families are unfit and pathological (Maynard, 2017). Not only are Black children and youth over-represented within the welfare system in Ontario, but service users report that they are treated differently with comparison to White children and youth, experiencing more negative outcomes and less access to required services.

The social circumstances of Black Canadians play a key role in influencing their experiences within this system. King et al. (2017) analyzed data from Ontario's child welfare agencies, finding that Black children were more likely to be investigated than White children, though he found little evidence to suggest that differences in substantiating cases, in transferring families to ongoing services, or in placing children in out-of-home care were based on race alone. However, he reported that severe economic hardship, combined with assessments about the quality of the parent-child relationship, contributed substantially to the decision to put the child in care.

As in the case with Indigenous peoples, it could be argued that assessments about parent-child relationships are based on White-middle class norms about family and parenting that are culturally biased against Black families. The practice of extended families caring for children, something common outside of the Western world, for example, may clash with Western notions of the nuclear family and ideas about who should have primary responsibility for raising children. These differences are compounded by the economic hardships facing many Black people in

Toronto which result in parents working long hours to support their families, while children are left in the care of grandparents, aunts, uncles and siblings.

Given concern about Black over-representation in the child welfare system, the Children's Aid Society of Toronto recently held a series of community consultations with the city's Black communities. Participants included parents who had involvement with the organization, adults who were in care as children, social service staff, and members of organizations that partner with child welfare agencies (CAS Toronto, 2015). A resounding theme of these consultations was the high degree of fear and mistrust of the system. Parents and caregivers said that they were not being 'listened' to by service providers and that children in care were not being heard. While participants acknowledged the need for child protection services to keep children safe from abuse, they also stressed the need for improved transparency and a greater range of service options for Black families. Significantly, there was a widespread perception of collusion between the major institutional systems that support Black children -- namely, child welfare, education, and criminal justice.

The over-representation of African Canadian children and youth within the child welfare system in Ontario and their experiences of discrimination within this system present a number of areas of concern. The removal of Black children from their parents disrupts Black families, thus weakening the ties of kinship that are important for the emotional and social development of children and youth (Owusu-Bempah and Howitt, 1997). As contact with the child welfare system is a predictor of later offending, disproportionate levels of contact with the system, combined with the absence of culturally appropriate practices, increases the criminogenic effect of care for African Canadians (Jonson-Reid and Barth, 2000; Owusu-Bempah, 2007; 2010). Furthermore, the high rates of contact with the system and the removal of Black children from their parents also reinforces negative stereotypes about the fragility of Black families and further pathologizes African Canadian communities.

In sum, experience with the child welfare system acts as a catalyst for criminal offending and is a burden disproportionately inflicted upon Black Torontonians. Their increased exposure to one state institution, child welfare, increases their chance of exposure to another, the criminal justice system. The failure of Ontario's education system to adequately address the needs of Black students also plays a role in their increased criminalization. We turn to this important institution below.

6. The Experiences of Black Children and Youth in Education

KEY FACTS (based on 2006 --2011 data from the Toronto District School Board):

*Almost half of the Black student population is streamed into non-university tract programs.

*Black students are more than twice as likely to be suspended and almost twice as likely to be expelled compared with White students and students from other racialized groups.

*Black students are twice as likely to drop out of school in comparison to White students and students from other racialized groups.

*Black students graduate below the provincial graduation rate.

The relationship between educational failure and criminalization is well-established (Groot & van den Brink, 2010; Lochner & Moretti, 2004). Poor academic performance, absence from school, and failure to graduate all increase the likelihood of offending.

As is the case with child welfare, concern about Black academic (under) achievement has been present in Ontario for several decades. In 1987, a Provincial Advisory Committee on Race and Ethnocultural Relations was formed following a provincial conference on race and ethnocultural relations. The Committee prepared a Working Paper in 1988 entitled "The Development of a Policy on Race and Ethnocultural Equity" (Ministry of Education, 1988). Shortly thereafter, in the wake of the "Yonge Street Riot," NDP Premier Bob Rae commissioned Stephen Lewis to investigate the state of race relations in Ontario.

The 1992 Stephen Lewis Report, as it has come to be known, highlighted a lack of progress being made to improve educational outcomes for Black students. Lewis outlined the concerns of Black students drawn from consultations held in Toronto and the surrounding areas. These concerns included: a lack of racial diversity among teachers; an

absence of Black people and Black history in the curriculum; the tolerance of racist incidents in schools; the harsher discipline of Black students; the streaming of Black students into courses below their ability; and Black students being discouraged from attending university. Similar findings by several other government-sponsored initiatives led to the NDP's amendments to the Education Act in 1992. These amendments called on school boards to develop and implement anti-racism and ethnocultural equity policies that would promote the identification and elimination of systemic inequities and barriers to equitable education for students and encourage equitable education practices for all staff (James & Turner, 2017).

The positive sentiment derived from these suggestions was short lived, however, following the election of conservative Premier Mike Harris in 1995. Harris campaigned on an anti-employment equity platform and a promise of increased discipline in schools. In 2000, a Code of Conduct for Ontario schools was released, followed soon after by the amendments to the Education Act, granting legal force to the Code of Conduct giving principals and teachers more authority to suspend and expel students. The Act made expulsions and suspensions mandatory for serious infractions and set out a zero tolerance policy for inappropriate behaviour. This approach to school discipline was criticized for suspending students for minor incidents and for being especially harsh on Black students (Puxley, 2007). In 2007, the OHRC and the Ministry of Education finalized a settlement to end the provincial zero tolerance policy and replace it with a progressive discipline approach to dealing with inappropriate school behaviours. Despite seemingly positive changes to the Education Act, including the implementation of an Equity and Inclusive Education Strategy in 2009, Black students continue to face poor educational prospects.

James and Turner (2017) analyzed data from a 2006--2011 cohort of Black students in the Toronto District School Board (TDSB) to examine their educational outcomes. Given the general youthfulness of the Black population, Black Canadians represent a larger proportion of students in the TDSB's high school population than they do in the general population. Whereas Black people represent 8.5% of the population of Toronto, they represent 12% of students in the 2006--2011 TDSB cohort documented in the James and Turner report highlighted below.

The streaming of Black students into non-university tract programs in schools has been an ongoing concern for students, parents, educators, community activists and some politicians. This concern centers on the perception that the streaming of Black students into non-university tract programs is the result of stereotypes asserting that Black people are less intelligent, less academically inclined (under-achievers), and thus more suited to vocational or college based programs (James, 2012: 482-484). As James and Turner demonstrate, in comparison to White and other racialized students, Black students in the TDSB are underrepresented in the Academic program of study and over-represented in the Essentials program. In the 2006--2011 cohort, 53% of Black students, 81% of White, and 80% of other racialized students were in the Academic program of study. On the other hand, Black students (39%) were over twice as likely White (16%) students and students from other racialized backgrounds (18%) to be enrolled in the Applied program. Black students were also three times as likely to be enrolled in the Essentials program (9% versus 3% of White and other racialized students) (James and Turner, 2017: 30).

Suspension and expulsion rates are also an important indicator of academic success as they reflect time spent outside of the educational system, thus impacting upon on student's attachment to their schools, peers, and teachers. Exclusion from school is widely recognized as a driver for wider social exclusion and is highly correlated with unemployment and involvement in crime. As Martin Narey (2001), Director General of HM Prison Service in the U.K. notes: "The 13,000 young people excluded from school each year might as well be given a date by which to join the prison service some time later down the line" (cited in McMurtry & Curling, 2008: 56).

Suspensions and expulsions may be particularly detrimental if they are perceived by students to be unjust, which in the case of Black youth, they often are (Ruck & Wortley, 2002: 190). Indeed, as Black students are often stereotyped as "trouble makers" and often subject to increased surveillance and school disciplinary action that align with this stereotype (James, 2012: 480-482). In the 2006--2011 TDSB cohort, Black students were more than twice as likely as White and other racialized students to have been suspended at least once during the academic year. Upon completion, 42% of all Black students had been suspended at least once, compared with only 18% of White students and 18% of other racialized students. Similar disparities exist with respect to expulsions. The TDSB data show that of the 213 students who were expelled between 2011-2012 and 2015-2016, almost half (48%) were Black (James and Turner, 2017: 36).

Finally, the data indicates that Black students' levels of academic success, measured in terms of graduation rates, is far below that of their peers. Among the 2006--2011 cohort, 84% of White students had graduated from high school at the end of 5 years, compared to 87% of other racialized students. By contrast, only 69% of Black students had

graduated from high school over the same five-year period. Likewise, Black students were twice as likely (11%) as White and other racialized students (both 5%) to be returning to high school the following year when they should have graduated and twice as likely to have dropped out (20%) compared to White (11%) and other racialized students (9%) (James &Turner, 2017: 31).

The negative consequences of Anti-Black racism in schooling generally and of zero-tolerance policies in particular, cannot be understated. Indeed, in their report on the Roots of Youth Violence, McMurtry and Curling (2008) argue that such policies have contributed to the school-to-prison pipeline, or the funneling of underachieving and excluded Black students into the criminal justice system. If Black students are not afforded the same opportunities for academic success as many of their peers, their life chances ultimately suffer. Poor educational outcomes for Black students ultimately have a negative impact on their employment prospects and earning potential. These problems not only affect individual Black Canadians, but by extension, also their families and communities.

7. Black Employment and Poverty

KEY FACTS:

*The income gap for visible minorities, including Black Canadians, is growing.

*One-quarter of Black Canadian women live below the poverty line (compared with only 6% for White Canadians).

*Black children are living in poverty at the unprecedented rate of 33% for those of Caribbean heritage, 47% of those from continental Africa (only 18% for White children).

The comparatively low levels of academic achievement, combined with structural and institutional forms of discrimination converge to produce inequalities in Canada's employment sector. Based on the poor educational outcomes for Black students presented in the section above, it is unsurprising that Black youth are particularly vulnerable to unemployment. In Toronto, for example, the unemployment rate in 2014 for Black youth aged 15 --24 was 30% compared with 20% of youth from other racial backgrounds (CivicAction, 2014).

High rates of Black unemployment are not a new phenomenon. Evidence suggests that Black job seekers are excluded from the labour market, in part, due to the discriminatory actions of employers. In early 1980s Henry and Ginzberg (1985) conducted a series of studies to examine the impact of race and foreignness (as indicated by name or accent) on the likelihood of being offered a job. In one study, Black and White actors were sent to interviews assuming the role of the same interviewee (the resumes were the same and the actors played the role of the same fictional job candidate). Ultimately, Henry and Ginzberg determined that Black applicants experienced discrimination in one-quarter of job contacts which could not have happened by chance alone.

More recent research has produced remarkably similar results. Douthwright (2017) created four fictional female job applicants; two White and two Black applicants submitted their resumes to entry-level retail jobs. In line with previous American research, Douthwright found that even the White applicant with a criminal record received more call-backs than the Black applicant with no criminal record (see Pager, 2003). Of the 64 applications submitted by the White applicant with no criminal record, 20 call-backs were received, whereas the White applicant with a criminal record received 12. By comparison, the Black applicant with no criminal record received only seven call-backs and the Black applicant with a criminal record received just one (Douthwright, 2017).

Employment discrimination also affects income levels for Black and other racialized Canadians. In fact, data from the 2016 census shows that the income gap for visible minorities actually increased between 2006 and 2016, with members of visible minority groups earning on average 26% less than non-visible minorities (Monsebraaten, 2017). Hou and Coulombe (2010) analyzed data from the 2006 census to examine the earning gaps between Canadian-born visible minorities and non-visible minorities working similar jobs in Canada's public and private sectors. Their research shows that while income was similar for members of visible minority groups in comparison to Whites working in the public sector, the data from the private sector was significantly different. Visible minority men, and Black women in particular, earn significantly less than comparable Whites (comparable in terms of educational attainment and years of professional experience, for example) working similar jobs in private industry. Hou and Coulombe attribute the income differences to differences of equality of opportunity. Whereas the public sector is

subject to employment equity regulations, the private sector faces less pressure to have equitable practices and policies.

Predictably, higher levels of unemployment and lower levels of income increase rates of poverty among Black Canadians. Whereas 6% of White Canadian women live below the poverty line, the figure is 25% for Black women in Canada. As a result, Black children are living in poverty at the alarming rate of 33% for those of Caribbean heritage and 47% of those from continental Africa (UNHR, 2016). The rate for White children is 18%. In Toronto Specially, African Canadians accounted for 19% of people living in poverty, while comprising just 8.4% of the population (National Council of Welfare, N.D)4.

In addition to their individualized experiences with poverty, Black Canadians are also over-represented in Toronto neighbourhoods most afflicted by poverty and other forms of disadvantage.5 Compounding the effects of lower household incomes, these neighbourhoods are underserved by public transit and contain a lower concentration of essential services. As a result, Black people in Toronto have poorer access to recreational and community centres, libraries, good schools, community health hubs and hospitals (Hulchanski, 2010). These are the very services that serve to create strong communities and to protect young people from the allures of crime, gang membership and the violence that accompanies it (McMurtry and Curling, 2008: 31). Accordingly, in the absence of important social services and in the presence of increased poverty, crime and victimization remain higher in these communities. For example, rates of shootings and homicides are higher in these neighbourhoods than the city average, and the victims of homicide younger than for Toronto as a whole (Hulchanski, 2010: 23). As noted above, it is young Black men who are most adversely affected by this violence. In response, these neighbourhoods are also subject to a hard-enforcement style of policing aimed at targeting its perpetrators (Owusu-Bempah, 2014).

8. Black Canadians' Perceptions of and Experiences with the Criminal Justice System

KEY FACTS:

*Over 80% of Black Canadians in Toronto feel that police treat Black people worse than White people.

*Half of the Black student population in Toronto report being been stopped and questioned by the police on two or more occasions in the previous two years (compared with 23% of White students).

*Black people are over-represented in police "contact cards" for all areas of Toronto, regardless of neighbourhood crime rate or racial composition.

*Black accused are more likely to be detained before trial than White offenders.

*Incarceration is becoming increasingly concentrated among Black Canadians.

The historical record suggests that Black Canadians have had a long and tenuous history with the criminal justice system. Walker (2010) describes the discrimination faced by Black defendants in Ontario's courts during the 18th and 19th centuries. Similarly, Mosher (1998) documents how police used public order offenses in the early 20th century as a means of controlling Toronto's Black population. The historical and contemporary treatment of Black people in the justice system is has its genesis in Canada's experience with colonialism and slavery. During this period, Black people were systematically dehumanized and depicted as animalistic, aggressive, violent, and dangerous (Fishman, 2006; Owusu-Bempah, 2017). Following the abolition of slavery, the association of Blackness with violence specifically, and criminality in general, was used as a means as of social control and to justify restrictive immigration practices intended to restrict Black entry into Canada (Maynard, 2017).

Unfortunately, these perceptions have not completely subsided over time. As Roberts (2001: 103) points out, there remains a tendency in Canada to "racialize" crime; that is, to develop associations between criminality and racial or ethnic origin. Indeed, a significant proportion of the Canadian public continues to believe that racialized Canadians are involved in a greater proportion of offending than official criminal justice records suggest (Rankin & Powell, 2008). A survey conducted in Ontario in 1995, for example, found that nearly half of respondents believed that there was an inherent relationship between race and criminality. Of the respondents with this view, two-thirds selected "West Indians" or "Blacks" as being the most responsible for crime (Henry et al., 1996: 472).

The continued criminalization of Black people is sustained in part by the manner in which they are depicted in various forms of popular media (Welch, 2007). Wortley (2002), for example, conducted a content analysis of stories appearing in Toronto newspapers over a two-month period in 1998. He found that almost half of all stories featuring Black people dealt with issues relating to crime and violence, compared to only 14% of stories featuring Whites. His analysis identified major racial differences in the news narratives that sought to explain criminal behaviour. While crime involving White people was almost always explained as the product of individual pathology, Black criminality was typically characterized as a group phenomenon (see also Henry & Tator, 2000; Mosher, 1998). Contrasting with popular perceptions of Black criminality are public perceptions of criminal injustice. As part of its research, the Commission on Systemic Racism in the Ontario Criminal Justice System asked justice practitioners and members of the public about their perceptions of bias and discrimination within the system. The Commission's findings show that a significant proportion of both judges and lawyers felt that Black Canadians were treated differently in court than White Canadians in court than White Canadians (Commission, 1995). Members of the public were also asked about bias in both policing and the criminal court system. The survey found that over half of Black, White, and Chinese respondents from Toronto believed that the police treat Black people differently than White people. Similarly, over half of Black respondents and one-third of both White and Chinese respondents felt that Black people are treated differently the courts.

This study was replicated in 2007, 15 years after the initial study was conducted. What may be of surprise, in light of the myriad "race relations" initiatives that had been implemented over the previous decade, is that the more recent study found that perceptions of bias actually increased among Black and White respondents. For example, in 1994, 76% of Black respondents felt that the police treated Black people worse or much worse than Whites. By 2007 this figure had risen to 81%. Similarly, in 1994, 48% of Black respondents believed that a Black person would get a longer sentence than a White person charged with the same crime. In 2007 this figure had risen to 58% (Wortley & Owusu-Bempah, 2009: 465).

Citizens' perceptions of criminal injustice constitute an important social issue. Not only are the police and court system reliant on the citizenry to act as witnesses and co-operate as victims, but mounting evidence also suggests that negative views of the system contribute to criminal offending (Tyler, 1988; Tyler, 2003; Tyler & Fagan, 2008). People who view the system as unjust are less likely to believe they should abide by that system's rules (Tyler, 2003). This is particularly salient in the current context. As Black people are more likely than members of other racial groups to perceive the justice system as discriminatory, they are also more likely to participate in what might be thought of as "system-generated offending behaviour."

Likewise, evidence suggests that Black youth engage in violence as a means of "self-help" resulting from the belief that the police cannot, or will not, provide them with adequate protection (Wilkinson, Beaty and Lurry, 2009). Indeed, Wilkinson et al. found that gun carrying among Black youth in their sample resulted out of a fear of victimization and a feeling that the police could not act as capable guardians (2009: 29-31). The perception that they must take the law into their own hands not only adds to the cycle of violence in disadvantaged neighbourhoods, but also increases the risk of criminalization for Black youth when they do encounter the police. Below we examine evidence of Black over-representation in three aspects of the delivery of the criminal justice in Ontario. These practices have troubling consequences for incarceration rates of young Black Canadian men.

1. Police Stop and Search Practices
Survey research conducted over the past 20 years consistently demonstrates that Black Canadians are more likely than members of other racial groups to be stopped, searched, and questioned by the police. For example, a 1994 survey of Toronto residents found that almost one-third of Black male respondents had been stopped and questioned by the police on two or more occasions in the previous two years, compared with only 12% of White and 7% of Asian males (see Wortley & Tanner, 2003: 371). Further analyses reveal that these racial differences in police contact are not explained by racial differences in social class, education, or other important demographic variables. Indeed, two factors that appear to shield White males from police contact, age and social class, do not provide Blacks with the same protection. For example, White people with higher levels of income and education are less likely to be stopped by the police than are White people with lower incomes and levels of education. On the other hand, Black people with higher levels of income and education are actually more likely to be stopped than Black people with lower incomes and levels of education (see discussion in Wortley & Tanner, 2003: 371).

A second Toronto survey involving youth paints a similar picture. Wortley and Tanner (2005: 586) asked Toronto high school students about their recent experiences with the police. Their survey found that over 50% of the Black students reported being been stopped and questioned by the police on two or more occasions in the previous two years, compared to only 23% of White, 11% of Asian, and 8% of South Asian students. Similarly, over 40% of Black students said that they had been physically searched by the police in the previous two years, compared to only 17% of their White and 11% of their Asian counterparts.

A further analysis of this data demonstrates that racial differences in being stopped and searched by the police could not be explained by racial differences in criminal activity, gang membership, drug and alcohol use, or public leisure activities (Wortley & Tanner 2005). More recently, a 2007 survey of Toronto adults found that Black residents were three times more likely to be stopped and searched by the police in the previous two years and that this racial disparity could not be explained by racial differences in criminality, drug and alcohol use, driving habits, use of public spaces, poverty, or residence within a high-crime community (Wortley & Owusu-Bempah 2011).

Another source of police information that has gained an immense amount of public attention in recent years are the "contact card" or "street check" data collected by police officers in the course of their duties. These forms of data are not collected by police in every civilian encounter, but rather those for which the officer wants to record information about a stop for intelligence purposes. In addition to details about the stop, contact card and streets checks also typically garner demographic information about the civilian, such as their age, race, and gender. As such, it can be argued that the practice of 'carding' provides insight into police surveillance practices that typically target the individuals and neighbourhoods subject to increased levels of police scrutiny (Owusu-Bempah & Wortley, 2014). Data from across Ontario demonstrate that Black people are over-represented in the 'carding' activities of a range of police services. These include Peel (Grewal, 2015), Waterloo (Sharkey, 2016), Hamilton (Bennett, 2015), London (O'Brien, 2016), Ottawa (Yogaretham, 2015), and Toronto (Rankin, 2010b). The Toronto Star's analysis of over 1.7 million "contact cards" filled out by the Toronto police between 2003 and 2008 found that Black people comprised almost 25% of those documented by the police, while representing only 8.4% of the population. Interestingly, the data also indicates that Black people are over-represented in police "contact cards" for all areas of the city, regardless of neighbourhood crime rate or racial composition (Rankin, 2010a; 2010b).

The targeting of Black Canadians by the police has two main consequences for Black communities in Canada. First, because Black people are exposed to higher levels of police surveillance, they are also much more likely to be caught breaking the law than are White people who engage in in the same forms of law violating behaviour. The Toronto high school survey discussed above, for example, found that 65% of the Black drug dealers6 said that they had been arrested in their lifetime, compared with just 35% of the White drug dealers (Wortley &Tanner, 2005: 586). Similarly, data recently published by the Toronto Star showed that between 2003 and 2013, Black people accounted for 25.5% of people arrested for cannabis possession by the Toronto Police Service while accounting for 8.4% of Toronto's population. Key here is that cannabis arrests increased in tandem with the practice of police 'carding' in Toronto over this period (Rankin and Contenta, 2017). As rates of 'carding' increased, so too did the number of cannabis possession arrests laid by the Toronto police. Therefore, race-based targeting may help explain why Black people are over-represented in arrests for cannabis possession even though empirical evidence suggests that rates of cannabis use are similar across racial groups (Hamilton et al., 2018).

A second important consequence of differential police stop and search practices is that they contribute to perceptions of criminal and social injustice. Indeed, evidence suggests that Black people who are frequently stopped and questioned by the police perceive much higher levels of bias and discrimination in the Canadian criminal justice system than do Black people who are not frequently stopped (Wortley and Owusu-Bempah, 2011). As such, these practices may signal to Black people, that irrespective of individual behaviour, being Black means being considered one of the "usual suspects" (Ibid).

2. Pre-trial Decision-Making
As gatekeepers of the criminal justice system the police influence who is officially processed by that system. Here, racial disparities at the front end in terms of stop and search, and other areas of decision making, can have serious consequences. An analysis of Toronto Police data on drug arrests carried out by the Toronto Star showed that Black people were not only over-represented in drug possession charges, but were also less likely to be released by the police at the scene than White people. The data indicated that 23. 6% of those arrested on one count of simple drug possession were Black (compared with 8.1% of the population) and 63.8% were White (compared with 62.7% of the

population). While 76.5% of White accused were released at the scene on drug possession charges, the same was true for only 61.8% of Black accused (Rankin et al., 2002a;b).

Pre-trial detention rates also varied between the two groups, as 15.5% of Black accused were held until their trial compared to 7.3% of Whites. These findings held constant, even after controlling for other relevant factors (Rankin et al., 2002a;b). A study conducted by Kellough and Wortley (2002) provides further evidence of racial disparity in pre-trial decision-making. This study tracked over 1,800 criminal cases from two Toronto bail courts during a six-month period in 1994. The findings indicate that 36% of Black accused were detained before trial compared to 23% of accused from other racial backgrounds. Again, race remained a significant factor even after controlling for relevant factors such as flight risk and danger to the public (Kellough & Wortley, 2002: 195-196).

Data recently released by the Ontario Ministry of Community Safety and Correctional Services shows that Black accused are also detained longer before trial than White accused (Mehler-Paperny, 2017). It is important to note that the denial of bail has serious consequences for the accused. First, the denial of bail might be used as a way to coerce guilty pleas from individuals who are reluctant to be held in detention centres for extended periods of time. Second, individuals who have been denied bail receive longer custodial sentences than individuals who are found guilty but were not held in remand before their trial (Sacks & Ackerman, 2014: 69).

3. Incarceration

Despite a decline in the overall inmate population, the number of Black offenders confined in Canadian federal correctional institutions increased by 75% in the decade leading up to 2012. Whereas Black Canadians represent just 2.9% of the overall Canadian population, they accounted for 9.3% of the total federal prison population (Office of the Correctional Investigator, 2013a). Of concern is both the increasing representation of Black Canadians in federal custody, and also their treatment within these institutions (OCI, 2013a; b; 2014; 2015; 2016; 2017). Based on consultations with Black inmates and a review of correctional data, the Office of the Correctional Investigator (OCI) produced a detailed report that documented the inequalities faced by Black inmates (OCI, 2013a).7

The OCI found that Black inmates consistently reported that institutional rules were applied differently to them when compared with Whites and inmates from other racial groups. Indeed, the OCI determined that between FY 2007/08 and 2011/12, the number of Black inmates facing disciplinary charges increased by 59%, whereas the overall number of disciplinary charges laid over the same period dropped by 7%. Of note, over this period, Black inmates were consistently over-represented in discretionary charge categories (those requiring judgement on the part of correctional officers), whereas they were consistently under-represented in less discretionary charge categories (such as possession of stolen property, theft and damage of property) (OCI, 2013a: 22).

Furthermore, between 2009 and 2013, despite being classified as having lower risk/needs scores, Black inmates were more likely to be placed in maximum security (OCI, 2013a: 21). In addition to being sent to higher security facilities, despite being classified on average as lower risk, Black inmates are less likely than their counterparts to have their custody score lowered so that they could be transferred to medium or minimum security prisons. This suggests that at some point between risk classification and prison placement, Black inmates are classified as higher risk, deserving of maximum security, and at no point does it appear that this assessment reversed. The OCI has also found that Black inmates are over-represented in admissions to segregation and disproportionately involved in use of force incidents. Whereas Black inmates accounted for 9.3% of the total inmate population in FY 2011/12 they accounted for 11.7% of inmates placed in involuntary segregation (OCI, 2013a: 23). In FY 2012/13 Black inmates were involved in 13% of use of force incidents.

The bulk of evidence from the OCI report suggests that Black inmates were often not treated with dignity and respect by CSC staff. Evidence also suggests that such (mis)treatment was tied to aspects of the inmates' culture (e.g. language, dress, etc.) and the places from which they were drawn (i.e. where Black inmates lived prior to incarceration). Black inmates provided examples of over-hearing CSC staff mocking the way they spoke or trying to speak with a Jamaican accent, for example, to their colleagues. One inmate reported a correctional officer asking him "What is wrong with your tongue, don't talk to me like a hoodlum" (OCI, 2013a: 19).

Black inmates also reported numerous examples of stereotyping and that judgments about their character and lifestyle were also common. Most of the Black men described being labeled a 'gang member', a 'trouble maker, a 'drug dealer', and/or a 'womanizer' (OCI, 2013a: 17). Furthermore, among Black inmates "The gang member/affiliation stereotype" was of "particular concern" (Ibid). During the focus groups, Black inmates stated that correctional staff associated Black inmates' home postal code with gang membership. This meant that depending on

home address of the inmate, Black inmates were associated with gangs from that area. Consequently, Black inmates reported that the gang label hindered their ability to obtain access to CORCAN jobs8, thereby leaving them working jobs that provided little valuable experience (Ibid). Indeed, while the overall prison unemployment rate in federal correctional facilities was 1.5% in 2012/2013, the unemployment rate for Black inmates was much higher at 7%. Therefore, Black inmates were disproportionately restricted from receiving hands-on training in employable skills that would aid their re-entry into society (OCI, 2013a: 20).

Black overrepresentation in corrections is also apparent at the provincial level. In 2010, Black adults accounted for 17.7% of admissions to provincial custody while making up 3.9% of the overall population (Owusu-Bempah & Wortley, 2014). Similarly, in 2011-2012, Black youth accounted for almost one-quarter (24.1%) of admissions to custody in Ontario while comprising only 3% of the province's youth population at the time (Rankin & Winsa, 2013). Notably, the incarceration rates for young men have steadily declined since the introduction of the Youth Criminal Justice Act in 2003; however, Black male youth have not benefitted from this decline. In fact, evidence from both the federal and provincial correctional systems indicate that incarceration is becoming increasingly concentrated among certain racialized groups, and in specific geographical areas, and that Black Canadians have been disproportionately affected by these trends. This is troubling in light of what is known about the negative consequences of concentrated incarceration.

For individuals, incarceration significantly reduces later employment rates and income levels (Freeman, 1992). Incarceration also has a significant negative influence on social networks, social relationships, and long-term life chances, thus impacting one's ability to contribute to family and community (Clear, 2008; Roberts, 2004). The families of those incarcerated also suffer financial and emotional costs related to separation, the loss of income, and the need to support an imprisoned family member (Braman, 2002; Wildeman et al., 2012).

There is evidence to suggest that the arrest of parents disrupts marital relationships, separates children from their parents, and can result in the permanent dissolution of these relationships (Christian, 2004). Research has also shown that children with parents in prison suffer serious psychological consequences, including depression, anxiety, feelings of rejection, shame, anger, and guilt (Browning et al, 2001). These children are also more likely to experience school failure, under-employment, and illegal drug use (Clear, 2008). Importantly, studies have shown parental incarceration to be a risk factor for juvenile delinquency, further exacerbating crime problems in affected communities.

The impact of concentrated incarceration clearly extends from the family unit into the community. As going to prison has a permanent impact on employment and earning potential, it also damages the labour prospects of young people in a community by decreasing the pool of individuals who can act as mentors and social contacts (Sabol & Lynch, 2004). A reduction in the number of people engaged in the labour market not only depletes supplies of human capital, but also affects the local economy because individuals have less money to spend at local establishments (Sullivan, 1989; Venkatesh, 1997). Importantly, concentrated incarceration distorts social norms, leads to the breakdown of informal social control, and therefore undermines the building blocks of social order which are essential for community safety (Clear, 2002).

In sum, concentrated incarceration can further exacerbate existing social problems, fostering a cycle of inequality within communities and across generations. The fact that incarceration is becoming increasingly concentrated amongst Black Canadians should be of a concern, precisely because it reproduces the very conditions that contribute to incarceration in the first place.

9. Expert Opinion
As documented above, Black Canadians present experiences are rooted in our country's history of colonialism, slavery and segregation. These systems, the latter of which existed well into the 20th century in Ontario, were premised on the idea that Black people are inherently inferior. These systems also served to structure the nature of early social relations in Canada, while at the same time shaping the economic and political landscape. While White Canadians were provided opportunity to access good schools, good jobs and representation in political office, Black Canadians were largely relegated to the margins of Canadian society.

These early experiences of Black Canadians has informed the experiences of those that have come after them. Stereotypical notions about Black intellectual inferiority, the pathological nature of Black families and of Blacks' supposed innate propensity for crime, all rooted in this early period, continue to influence how Black people are treated today. The data documented above demonstrate that Black children are disproportionately removed from

their families, due in part, to discrimination in child welfare assessments. Black children are deemed to be less academically inclined and thus streamed into non-university tract programs. They are also subject to harsher discipline in schools which reduces their likelihood of graduation. In the employment sector, Black people face discrimination in hiring, and at times, earn less money for similar work performed by White Canadians, resulting in increased rates of unemployment and poverty. The increased representation of Black people in impoverished neighbourhoods means that they have less access to good schools, community centres and health facilities. They are also exposed to the harsher forms of policing practiced in marginalized neighbourhoods in response to problems of crime and violence.

Importantly, Blacks' negative treatment by these institutions, and the disparate outcomes experienced within them, are cyclical and compounding. Indeed, increased exposure to the child welfare system reduces the chances of academic success, which reduces employability, thus increasing levels of poverty. These circumstances are passed from generation to generation.

The data documented above also clearly demonstrate that Black Canadians, and young Black men in particular, keenly feel the discrimination they experience at the hands of the criminal justice system. Young Black Canadians are not only over-represented in stop, search and carding practices of local police, but they serve longer periods of time in pre-trial detention, resulting in longer periods of incarceration than are others charged with the same or similar crimes. Not surprisingly, as Owusu-Bempah (2014) has found, Black male youth who perceive discrimination in policing also feel the same way about both the educational and employment sectors. Further, as Khenti (2013) notes, their experiences, personal and vicarious, with the criminal justice system contribute to the perception that they live "socially unjust lives." The conclusion is inescapable -- that young Black Canadians who view the system as unjust are less likely to believe they should abide by that system's rules.

It is our opinion that the social circumstances of Black Canadians in general, and of Black male Torontonians in particular, should be viewed as criminogenic. Elevated levels of offending in the types of crime that typically come to the attention of the police (street crimes as opposed to white-collar and corporate crimes), combined with discrimination in the justice system itself have resulted in the gross over-representation of Black Canadians in our provincial and federal correctional systems. Whereas no one individual should be completely absolved of their own responsibility when it comes to offending behaviour, the social realities that have produced or contributed to such behaviour can be acknowledged, and serve to guide judicial decision making.

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1 It should also be acknowledged that this reality is a feature of the distant past; the legislation that allowed for segregated schools in Ontario remained on the books until 1964 (Henry & Tator, 2005).

2 For example, the results of a 2007 public opinion poll showed 47% of Canadian respondents (outside of Quebec) reported being at least slightly racist. The figure for respondents in Quebec was 59% (Leger, 2007 cited in Patriquin, 2007).

3 It is important to note, however, that Black youth are not over-represented in all types of criminal offending. Data gleaned from the same survey show that White students report much more involvement with illicit drugs than Black youth. Indeed, 45% of White students reported that they had used cannabis at some time in their life (compared with 39% of Black students), 6% had used cocaine or crack (compared to only 2% of Black students), and 13% had used other illegal drugs (compared to only 3% of black students). Likewise, 17% of White students indicated that they had sold illicit drugs at some time in their life, compared to only 15% of Black students (Tanner and Wortley, 2002 in Owusu-Bempah and Wortley, 2014: 294). These findings are notable because Black people are generally over-represented in arrests and convictions for drug possession and trafficking.

4 See Table 10, Visible minority groups, 2006: Percent distribution of persons living in poverty.

5 As David Hulchanski (2010) points out in his Three Cities report, household income in the neighbourhoods in which Black people are most likely to live has decreased by 20% over the past three decades.

6 Defined as youth who reported selling drugs on 10 or more occasions in the previous 12 months.

7 The Office of the Correctional Investigator acts as the ombudsperson for federal prisoners.

8 "CORCAN is a special operating agency within the Correctional Service of Canada (CSC) that offers employment training and employability skills to offenders in federal correctional institutions, to support rehabilitation and help lower rates of re-offending." (CSC, 2016).