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**THE POLICE AND RACIAL PROFILING:  
A REVIEW OF THE LITERATURE, AN ASSESSMENT OF THE  
STAR ANALYSIS OF THE CIPS DATA, AND A SELECTED RE-  
ANALYSIS OF THE STAR DATA**

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This document is composed of three parts. Part I provides an overview of the research literature on racial profiling. Part II offers a critique of the analysis, findings, and conclusions of the *Star*, and Part III presents the findings of a selected re-analysis of the *Star* data. The document has been prepared mindful of the following observations made by researchers who have conducted studies on racial profiling:

“The problem of racial profiling is complex and multi-faceted.”

--- Rameriz, et al., 2002:4

“Racial profiling is a phenomenon that must be studied in conjunction with the question of *why* a person of color is stopped.” (emphasis added)

--- Cooper, 2001:55

“The collection and application of statistical data is a scientific and academic exercise requiring a well-designed protocol.”

--- Kruger, 2002:10

**PART I.**  
**RACIAL PROFILING BY THE POLICE:**  
**A REVIEW OF THE RESEARCH LITERATURE**

“Most of the existing research on racial profiling has been descriptive in nature and has been conducted by law enforcement agencies or interest groups. This research has not been subjected to peer review, nor has it been published in academic or scholarly journals.”

---Smith and Petrocelli, 2001:8

In civil society, it is important that public policy debates be informed to the greatest extent possible by empirical research with an acknowledgement that the “truth” surrounding any one issue is often illusive and may never be conclusively established. The importance of issues such as racial profiling – for the community, for police officers, for police organizations, and for policy and practice – requires that every attempt be made to ensure that positions that are assumed are based on the best possible information and analysis. Unfortunately, the debate over whether the police engage in racial profiling in Canada has been primarily a political debate, uninformed by scientifically valid data and analyses. This has served only to create conflict and suspicion and to hinder efforts to examine the issue in an objective fashion. The articles accusing the Toronto Police Service of racial profiling that appeared in the *Star* during the months of October and November, 2002 represent the type of materials that do not withstand close scrutiny and serve only to hinder an informed discussion of the topic.

Any discussion of police decision making and racial profiling and of the patterns of interaction between police and minorities will rely heavily upon research studies conducted in the U.S. There is not, in Canada, a substantive body of scholarly literature on police decision making, police-minority relations, nor a separate body of theory of police practice that can be called upon. The studies that have been conducted to date in Canada fall far short of the requirements for scientific inquiry and cannot be used to inform the debate over racial profiling. One requirement would be that the studies attempt to *explain* the sources of any disparities in aggregate rates of police contact with whites and minorities. The limitations of the materials presented by the *Star* and of the research

studies used to support the conclusions that the TPS engages in racial profiling will become evident in the following discussion.

Racial profiling is an issue that is important to the community and the police. Given the significance of this issue, it is incumbent upon all parties to ensure that statements and assertions that are made are premised on methodologically sound data that have been gathered and analyzed in accordance with established research protocols. Further, parties to the debate must acknowledge the complexity of the issue and exercise caution in setting forth conclusions about police practice and racial profiling. The consideration of the topic of racial profiling is limited by the available research. Most of the existing research on racial profiling has been descriptive in nature and has been conducted by law enforcement agencies or interest groups. This research has not been subjected to peer review, nor has it been published in academic or scholarly journals.

## **RACE AND CRIMINAL JUSTICE**

Crank (2003:232) notes that “Issues of race bring out the most complex methodological, theoretical, and ethical issues in justice today” and points out that the controversy posits two conflicting notions of social morality against one another. On the one side of the issue are those who argue that justice should be fair regardless of the consequences for minority group members and that the essential quality of justice is that it is rational and clear. On the other side are those concerned with racial equality and the concern with the high numbers of minority persons who are convicted. From this perspective, the rationality of the law and its application are not the primary issue. These contrasting perspectives are evident in the debate over racial profiling.

Walker, Spohn, and Delone (2000) have described the justice-minority nexus in terms of its location on a *discrimination continuum*. At one end of the continuum is “pure justice” which represents no discrimination in justice practices; at the other end is “systemic discrimination”, denoting a criminal justice system in which discrimination exists at levels of the criminal justice system at all times. According to these scholars, the large body of research evidence in the U.S. indicates that there is an intermediate model of justice system discrimination, *contextual discrimination* in which

Racial minorities are treated more harshly than whites at some stages of the criminal justice process (e.g. the decision to seek or impose the death penalty) and no differently than whites at other stages of the process (e.g. the selection of the jury pool). The treatment accorded racial minorities is more punitive than that accorded whites in some regions or jurisdictions, but no different than that accorded whites in other regions or jurisdictions” (Walker, Spohn, and DeLone, 2000:288).

### *Contextual vs. Systemic Racism*

There is research evidence to suggest that racial disparities in the criminal justice system are specific to location or stage of the adjudication process, that is, such disparities are contextualized. From this perspective, “the criminal justice system is not racist, even though some of the contexts may be very widespread” (Crank, 2003:234-35). The contrasting perspective is that racial disparities in the criminal justice system are systemic, that is the “cumulative effects of race-based decisions result in systemic racist practices.” (Crank:2003:235).

In a study of case processing in the criminal justice system entitled *Racial Disparities in the Criminal Justice System*, Petersilia (1983) found that racial differences did not account for differences in the proportions of arrest for crime. However, the report did document many instances of *localized* racial bias that tended to vary by place and condition. The bias was contextual rather than systemic, that is, patterns of discrimination in one place were not necessarily present in another because the context within which it occurs was different. (cited in Crank, 2003:238).

Similarly, in a review of the literature, Chiricos and Crawford (1995) found that a number of contextual factors influenced the relationship between race and sentencing in U.S. criminal courts. These included the jurisdiction in which the sentencing occurred, unemployment rates in the jurisdiction, and the prior criminal record of the offender. These authors highlighted the importance of examining the structural contexts within which blacks encounter the criminal justice system and the specific economic environments in which justice agencies operate.

From a review of the scholarly literature on discrimination in the administration of justice, Crank (2003:238) concludes that the research has shown substantive effects and no effects, “depending upon what element of the justice system is examined and what

level of aggregation is used (individual-level, municipality, state, or nation). Crank (2003:238) contends that “In order to identify racial disparities in the delivery of justice, we need to identify the correct contexts.”

Research suggests that police behaviour also varies by ecological or neighbourhood context (Klinger, 1997). Disparate treatment of minorities may not be a function of race alone. Rather, the racial and class composition of a neighbourhood may influence police behaviour and the perceptions of police behaviour held by community residents (see Smith, Graham, and Adams, 1991; Weitzer, 2000). Meehan and Ponder (2002) reported a “race and place” dimension of racial profiling. More specifically, they found that African-Americans were subject to disproportionate surveillance and stopping by the police when driving through white areas of the community. Racial profiling by the police increased the further black drivers were from “stereotypical” black communities and into wealthier white communities. The data obtained by the *Star* did not allow for an examination of the “race and place” effect.

Several researchers have also noted the importance of addressing the issue as to whether racial groups differ in their rate and degree of law-violating behaviour (see Ekstrand, 2000; Zingraff, et al, 2000). There is some evidence to suggest that the rates of crime in a neighbourhood or area may contribute to any disparities in rates of contact or arrest that are present. In a review of research findings on race and justice at various stages of the criminal justice process, Sampson and Lauritsen (1997) found that racial differences in arrests for street crimes were explained by black involvement in crime. Similarly, Kennedy (1999) has defended the use of racial profiling on statistical grounds, citing the empirical fact that, in certain jurisdictions, individuals associated with particular racial groups commit a disproportionate number of the crimes.

### **Systemic vs. Contextual Racism in Canadian Criminal Justice**

The preponderance of the research findings from U.S. studies and the very limited materials available from Canada indicate that racism, where it does exist, is contextual. The position taken by the authors of the *Star* articles, however, is that the alleged racial profiling activities of the TPS are an extension of systemic racism inherent in the criminal justice system and in the TPS as one component of that system. It is alleged that the

entire TPS uses racial profiling as a standard operating procedure. No scientifically valid data are presented to support any of these assertions, nor is there a body of scientifically-valid research to support the assertion that the Canadian criminal justice system is systematically racist or that any police service in Canada, including the TPS, carries out its duties in a systemically racist manner.

Contrary to reports in the media reports and the assertions that are often made by various parties, there is no body of empirical evidence that the Canadian criminal justice system is racist nor that the various components of the justice system systematically discriminate against persons of colour. There are documented cases in which *individual* criminal justice practitioners have engaged in behaviour that is racist and discriminatory; however, these instances cannot be utilized to depict the entire system or entire components of the system, i.e. an entire police service, as racist. As noted, the studies have not been conducted that would allow such an assertion to be made and to be empirically validated.

It is important to distinguish between racist attitudes and behaviours on the part of *individuals* who work in the criminal justice system, and the entire system or the entire organization in which that individual works. Validation of global statements, such as “the police service uses racial profiling” would require data and analyses that have not yet been gathered nor carried out in Canada.

There is only fragmented evidence to indicate that the Canadian criminal justice system, and the police as a component of the system, is racist in certain localized contexts. The research that would indicate the attributes of localized contexts in which racially-biased decisions are made has not been conducted. The limited case study evidence in Canada suggests that racist practices on the part of the criminal justice system, where they occur, are contextual rather than systemic. This is illustrated by the recent convictions of two Saskatoon city police officers for the death of an Aboriginal person who was transported outside the city limits and subsequently died from exposure. The oft-repeated accusations that the Canadian criminal justice system is systemically racist and that the activities of the TPS as a component of the justice system are systemically racist are not supported by scientifically valid analyses. As well, the accusations in the *Star* articles that racism and racial profiling are systemic and that the



entire police organization uses racial profiling as an integral part of its policing activities in the community are unsupported by scholarly research and by the findings of the *Star's* own analysis of the CIPS data.

## **DEFINING RACIAL PROFILING**

A variety of definitions have been developed for “racial profiling” and the specific definition that is used will significantly impact all facets of research on the topic. The interpretation of findings and the determination of whether a police department and/or its officers are engaged in racial profiling depends to some extent on the specific definition used. As Rameriz, et al. (2001:4-5) point out: “When seeking to determine whether allegations of racial profiling are accurate, any analysis concerning the nature and scope of the problem depends on the definition of racial profiling used.”

The most commonly-used, and narrow, definition of racial profiling is that it is present when law enforcement activities, e.g. detentions, arrests, searches, are initiated *solely* on the basis of race. *By this definition, for an action to constitute racial profiling, the officer's motivation or intent to discriminate by race must be demonstrable* (emphasis added) (Meehan and Ponder, 2002:403). This is the definition of racial profiling used by the *Star* and it requires empirical data to prove that decisions are made by TPS police officers *solely* on the basis of race.

Rameriz, et al. (2001:5) offer a more expansive definition of racial profiling as being “police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particularly individual who has been identified as being, or having been engaged in criminal activity.”

A broad definition of the term is also offered by Fridell, et al. (2001:5) who state that racial profiling occurs “when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.” This definition leaves open the possibility that there are instances in which police officers may “appropriately” consider race or ethnicity when making decisions of when, with whom, and how to intervene in carrying out their policing duties.

In their report, Fridell, et al. (2001:3) deliberately avoided using the term “racial profiling” because this term “has frequently been defined so restrictively that it does not

fully capture the concerns of both police practitioners and citizens.” These authors (2001:3) note that use of the term “racial profiling” imposes several important conditions on any discussion of the police and minority persons. For example, it excludes police activities that are supported in law, such as “reasonable suspicion” or “probable cause.” In reflecting upon this, the authors state:

In the realm of potential discriminatory actions, this definition likely references only a very small portion. Even a racially prejudiced officer likely uses more than the single factor of race when conducting biased law enforcement. For example, officers might make a decision based on the neighborhood *and* the race of the person, the age of the car *and* the race of the person. *Activities based on these simple pairs of factors would fall outside the most commonly used definition of racial profiling* (emphasis added).

Studies have also revealed that the general public and the police often have different definitions of racial profiling.

#### *The Public’s Definition of Racial Profiling*

Research studies have found that, when discussing racial profiling, citizens use a broad definition of the term that encompasses all manifestations of racially-biased policing. Fridell, et al. (2001:14) reported that citizens in a focus group setting indicated that they were likely to interpret various “negative aspects” of a vehicle stop as racially biased policing. The tendency of the public to equate any negative features of an encounter with a police officer as being racially-based requires that research studies based on citizen perceptions of the police decision making be very carefully considered. This caveat applies to the research conducted by Wortley entitled “The Usual Suspects” and to the survey of high school students in Toronto conducted by Tanner and Wortley.

#### *The Police Definition of Racial Profiling*

Police practitioners use a much narrower definition of racial profiling, centered on race being the sole criteria for a traffic stop or for the decision to stop and search a person.

The variety of definitions of racial profiling that have been used by research scholars and the differing conceptions of racial profiling held by community residents and the police have added to the difficulty of studying racial profiling.

### **POLICE DECISION MAKING AND RACIAL PROFILING**

The exercise of discretion by police officers in the performance on their duties has been the focus of research by social scientists for the past fifty years. A key area of research has been the relative influence of legal and extra-legal factors on decision making. The more recent focus on racial profiling by research scholars is an extension of this research tradition.

The use of racial profiling by the police has been defended by some researchers and practitioners on the basis that profiles are based on accurate facts about the racial distribution of particular offences (Taylor and Whitney, 1999). Other experts have challenged the accuracy of these profiles, and others have argued that, even if they are accurate, race-based decision making is inappropriate (Harris, 1997, 1999; Kennedy, 1997).

However, in these debates and in much of the academic research on racial profiling, there is the unsupported assumption that *all* race-based decision making by police officers is motivated by individual police officers' prejudice. Engel, et al (2002:250) reviewed 13 studies that collected data on police-citizen contacts during traffic and field interrogation stops, each of which found racial disparities in the aggregate rates of such stops and concluded:

*The problem with interpreting the findings is that the mere presence of disparities in the aggregate rate of stops does not, in itself, demonstrate racial prejudice any more than racial disparity in prison populations demonstrates racial disparity by sentencing judges. (emphasis added)*

Interestingly, and directly relevant to the current debate over racism and racial profiling in Canada, is the statement by Engel, et al. (2002:251) note that "Most of the research on criminal justice has documented that the impact of racial prejudice on criminal justice agents' decision making has been *decreasing* in prevalence and importance for at least 30 years" (emphasis added). Across North America, legislatures, courts, elected political officials, and senior police managers have made significant

efforts to reduce and eliminate prejudicial behaviour on the part of police officers (see Zatz, 1987). From an extensive analysis of several national data sets in the U.S., DeLisi and Regoli (1999) concluded that there has been a sharp decrease in the levels of racial bias in the criminal justice system.

Engel, et al. (2002:252) note that research studies conducted in the past decade have produced findings inconsistent with earlier research studies and the current research evidence indicates that the behaviour of police officers “is predicted primarily by legal and situation-specific factors and that the influence of race and other extra-legal factors is diminishing” (see also Mastrofski, Worden, and Snipes, 1995; Riksheim and Chermak, 1993).

In Canada, the enactment of the Charter of Rights and Freedoms, the creation of structures of accountability for criminal justice practitioners, including the police, and the increasing involvement of the courts in matters relating to citizen rights have combined to confine and structure the discretion exercised by personnel in the criminal justice system (see Griffiths and Hatch Cunningham, 2003). This extends to policing, Griffiths, et al. (1999:58-59) observing that contemporary police work in Canada is carried out within legislative and administrative frameworks that have functioned to increase the accountability of police officers. Canadian police officers can be held accountable under the Canadian Criminal Code, as well as under civil law, provincial statutes, and freedom of information acts for their actions. As well, various police boards, complaint commissions, and investigative units both within and outside police services have the authority to oversee and review the actions and decisions of police officers.

The philosophy of community policing is also having a significant impact on the structure and delivery of policing services in Canada. Community policing is based upon the development of police-community partnerships and specific strategies that emphasize crime prevention and problem solving. It provides a framework within which the police and the community, working together, can identify and address problems of crime and social disorder.

## **POLICE DISCRETION AND RACIAL PROFILING**

A key feature of policing is the exercise of discretion by line-level patrol officers in carrying out their duties. As Griffiths, et al. (1999) note that “Discretion permeates all facets of police work.” The exercise of discretion is particularly important in the area of traffic stops, as police officers must decide which cars to stop from among the universe of cars that are being operated in violation of the law. Since there are more vehicles being operated in violation of the law than there are resources to stop them, officers have wide discretion in selecting which cars to stop and in determining what action to take once a stop has been made.

### **The Continuum of Police Discretion**

Rameriz, et al. (2002:9) divide discretion into high and low discretion realms. Traffic and pedestrian stops can be viewed on a continuum from *low-discretion stops*, in which an officer’s decision not to make a stop is limited, to *high-discretion stops*, in which the decision to stop someone is often based on an officer’s experience in the field.

*Low discretion stops* are common in policing. These are generally based on externally-generated reports of a crime or suspicious activity, such as when a victim describes a particular suspect. In the traffic stop category, low-discretion stops also include such situations as a vehicle running a red light.

*High discretion stops* reflect the complexities of the exercise of police discretion. In the traffic stop context, these stops include checks for under-inflated tires, safety belt warnings, failure to signal. Rameriz, et al. (2000:9) discuss the significance of high discretion stops in any study of racial profiling:

These high-discretion stops invite both intentional and unintentional abuses. Police are just as subject to the racial and ethnic stereotypes they learn from our culture as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected.

In the present case, the *Star* data and analysis do not indicate whether the contact with the person of interest was generated externally or by the officer, nor whether the vehicle stops and person searches were high discretion or low discretion encounters.

### **Typifications, Recipes for Action, and the Exercise of Discretion**

“ There is no one list of factors that gives rise to reasonable suspicions, as the varieties of suspicious behavior are as diverse as the types of activity punishable under the criminal law.”

-- Kruger, 2002:6

Rameriz, et al. (2000:36) note that police officers often have difficulty quantifying the decision to stop a vehicle. Research studies suggest that the exercise of discretion in traffic stops is influenced by a myriad of factors, including:

- the behavior of the operator of the vehicle
- the officer’s experience
- departmental policies and procedures
- the officer’s experience
- the crime problems experienced by a particular neighbourhood
- the officer’s knowledge of the area being policed
- the officer’s prior contact with certain individuals in specific situations
- available police resources

In extensive field observations of police decisions to stop motorists, Cooper (2001) found that many officers used a “thug profile” rather than just a race profile. The “thug profile” consisted of, but was not limited to, the type of vehicle, location, clothing, time of day, demeanour and race. Cooper (2001) also found that the predictors were not mutually exclusive, but an individual’s chance of being stopped by the police rose as the number of variables present increased.

The findings from field studies of police officer decision making have found that patrol officers bring to their work a set of cognitive lenses through which they make determinations of the level of trouble and danger, or potential for trouble and danger, that people and situations present. This, in turn, will affect the way in which officers exercise discretion and the specific actions which are taken in encounter situations. To assist them in responding to incidents in an efficient manner, police officers use a conceptual shorthand consisting of *typifications* and *recipes for action*.

Typifications are constructs or formulations of events based on the officer’s experience and denote what is typical or common about people and events that are

routinely encountered. Recipes for action are the actions taken and the decisions that are normally made by police officers in certain types of incidents.

Police officers, using typifications and recipes for action, tailor their decision making to the particular area and population being policed. Patrol officers use a variety of visual cues to determine whether a person out of place or an activity is unusual for the area. This practice, in itself, does not constitute racial profiling and may be viewed by the police, the general community, and the residents of the neighbourhood as “good police work.” A poorly dressed individual or a older model vehicle in a fashionable, upscale neighbourhood, for example, would attract the attention of officers on patrol, as would a well-dressed individual loitering in a Skid Row area. Any attempt to establish that a police department and its officers are engaged in racial profiling must examine the specific context within which police-citizen contact occurred.

Smith and Petrocelli (2001) offered as a possible explanation for the disproportionate percentage of minority stops and warnings in their study to the fact that traffic stop practices may reflect the environment in which the police officers function. In the city under study, African-American suspects composed 89% of the homicide arrests, 86% of the aggravated assault arrests, and 90% of all robbery arrests. Among these categories of serious violent crime, arrest figures closely track self-report and victimization data.

Under these circumstances, even the most completely impartial police officer “will feel reasonably justified in being more suspicious of the younger-poor-Black than of the old-rich-White” (Bittner, 1991:38).

In interviews with black police officers in New York City, MacDonald (2002a:4) found most officers rejected the racial profiling myth: “If you’re stopped,” said these police officers, “it’s for a reason – you fit a description, you’ve done something to raise an officer’s suspicion, such as hitch up your waistband in a way that suggests a hidden gun.” Many of the officers stated that statistics that tabulate officer-civilian interactions by race alone grossly distort the reality of police work. In the words of one black officer (cited in MacDonald, 2002a:4): “You have to look at time, place, and situation. You know what goes on at that corner. If someone’s hanging out with a known offender, ethnicity is the last thing that comes into play.”

Many black officers interviewed by MacDonald referred to racial profiling as a myth that, in the words of one officer “rests on a willful blindness to reality...Often the entire neighborhood is black, so of course you’re going to be stopping blacks – based on their behavior.” Another officer stated: “The racial backlash sparked by many anti-crime initiatives conveniently ignores one salient fact: most crime against blacks is committed by blacks, no Anglos or Hispanics.” (cited in, 2002:5)

Patrol officers also attempt to learn as much about the area being policed as possible and much of their information comes from community residents rather than via the databases available on the computer in their patrol car. Meehan and Ponder (2002:401) note that patrol officers “develop and use an intricate knowledge of place” that has been variously referred to by police scholars as “area knowledge”, “territorial knowledge”, and knowledge of “hot spots.” It is also often said that police officers have a “sixth sense” about people and situations that assists them in their work (Griffiths, Whitelaw, and Parent, 1999).

## **UNDERSTANDING THE DECISION MAKING OF POLICE OFFICERS**

Studies of police officer decision making indicate that a variety of factors may influence the decisions of police officers in encounters with citizens and that it is very difficult to quantify many of the influences on the police exercise of discretion. Some of the more important dimensions of police decision making are outlined below.

### **The Relationship Between Individual Officer Attitudes and Behaviour**

“It is only when we seek to *explain* officers’ behaviour that we may then take steps to control it.”

- - Engel, et al. (2002:270)

Most quantitative studies have found only a *weak* relationships between officers’ attitudes and their behaviour (c.f. Worden, 1989). These findings are in line with the large body of social-psychological research that indicates that the estimated relationships between attitudes and behaviour are counterintuitively small (see Schuman and Johnson, 1976).

Many of the empirical studies of racial profiling that have reported differences in stop and/or search rates between whites and non-whites have been taken to indicate that



the police are behaving in a discriminatory manner because of the racist attitudes of individual police officers. However, as Engel, et al. (2002:262) point out: “*Differences in aggregate rates tell only that differences exist; researchers have not measured why they exist.*” (emphasis added). To determine whether the differences exist because of the attitudes of individual officers, it would be necessary to measure both the officers’ attitudes and social influences that may mediate the relationship between attitudes and behaviour. This, in turn, would require that data be gathered from debriefings with officers or through surveys of officers about their behaviour. These types of data have not been gathered by researchers to date, nor do these types of data inform the articles written in the *Star*. As Engel, et al. (2002:263) note: “Until researchers incorporate the collection of attitudinal data into their data collection strategies, they must stop attributing officers’ behavior to officer attitudes.”

Smith and Petrocelli (2001) found that the age of the police officer was positively correlated with driver race. The distribution of stops among the various officer age groups showed a clear pattern of older officer stopping more white drivers relative to younger officers. More specifically, officers in the 46-50 age group stopped more white drivers, while those officers in the 26-30 age group stopped more than three times as many minority motorists as white motorists. This may be explained, in part, by police deployment patterns. It is not uncommon for younger, male officers to be assigned to a city’s high crime areas (Walker, 1999). Older officers may be assigned to quieter areas where there are fewer demands.

Smith and Petrocelli (2001) have also provided the only data on the ethnicity of the police officer as a predictor variable in traffic stops. Their analysis found that neither officer race nor whether the stop was made for investigatory purposes predicted the race of the motorist stopped.

Among the more significant findings of the study conducted by Smith and Petrocelli (2001) are the following:

- controlling for relevant variables, officer race did not predict the race of the stopped motorist

- officer age and gender were statistically significant predictors of a stopped driver's race, with young and male officers more likely to stop minorities than older and female officers
- one stopped, minority drivers were no more likely to be searched than whites

### **An Interactionist Perspective of Police Officers' Behaviour**

This explanation of police officer behaviour focuses on the impact on police officers' behaviour of the social dynamics that occur during interaction between police officers and citizens. This explanation would have the greatest utility in understanding the interaction that occurs after a stop has been made. Higher arrest rates among certain groups, i.e. young male blacks, may be a function of their demeanor toward officers which may, in turn, prompt an antagonistic response from the officers. The role of suspect demeanour as a determinant of police behaviour has been extensively documented (see Lundman, 1994, 1996; Son, Davis, and Rome, 1998; Worden and Shepard, 1996), and there are other situational factors that have also been found to be strong predictors of police behaviour. These include: 1) the suspect's attributes (e.g. gender, age, and whether the suspect is believed to be impaired by drugs or alcohol); 2) attributes of the police-citizen encounter (e.g. time of day, location, presence of bystanders, presence of other officers, and the presence of a complainant); and, 3) legal attributes of the encounter (e.g. seriousness of the suspected offence and strength of the evidence). (Riksheim and Chermak, 1993). It is possible that these attributes are correlated with a suspect's race or ethnicity and may contribute to disproportionate rates of contact with the police and the decisions made by police officers in encounter situations.

The amount of discretion that police officers exercise in any given encounter may be constrained by a number of factors, including the nature, type, and seriousness of the particular incident and the requirements of legislation. For example, provisions in the Canadian Criminal Code require police officers to detain persons until positive identification of their person can be made. Persons who have no valid identification on their person, or whom the police officer

suspects may be using an alias, will likely be detained and taken into custody until such time as positive identification can be established. Similarly, the Canadian Charter of Rights and Freedoms and numerous Supreme Court of Canada rulings have imposed on police officers high standards in exercising their powers, gathering evidence, and interacting with citizens.

It is also important to reiterate that the context within which the person is encountered may determine the officer's actions and that the offence for which the suspect is arrested may reflect only one of many attributes of the encounter.

### **The Influence of Departmental Policies on Police Officer Decision Making**

The decisions made by line-level police officers in the field may also be explained by the policies and preferences of the officers supervisors and the department's senior administration. Over thirty years ago, the police scholar James Q. Wilson (1968) found that in police-initiated encounters with suspects, police officers generally exercised a high level of discretion but that the decisions made by officers were strongly influenced by administrative policies. This suggests that the priorities of the police organization may influence how officers carry out their duties and the actions taken in encounter situations.

### **CURRENT RESEARCH ON RACIAL PROFILING**

To varying degrees all of the studies have found that minorities were stopped or searched in percentages greater than their population or involvement in crime or traffic violations would warrant, none of the studies was able to determine whether these differential stop and search rates were the result of differential treatment of minority citizens by white police officers.

Engel, et al. (2002) are among the many scholars who have observed that there are significant methodological and empirical issues involved in data collection and interpretation in research on racial profiling. In a review of 13 recent studies on racial profiling, these researchers scholars found:

- *the types of data on officers' decisions gathered in an attempt to assess racial profiling varied greatly between the studies.* Several studies gathered data only

on the initial stop decision, while others gathered information on the decisions made by officers following a stop.

- *all of the studies found differences in the rates of particular police actions for white and non-white citizens, but the authors reached different conclusions about the implications of this disparity.* Six of the thirteen studies reviewed concluded that these differences were due to racial discrimination on the part of the police (see ACLU, 2000; Spitzer, 1999). The authors of the seven remaining studies, however, acknowledged that the type of data necessary to rule out alternative, legitimate, race-neutral explanations for the disparity were not collected. These studies were more conservative in their interpretations of data discrepancies and concluded that the disparities between racial groups did not necessarily imply discrimination (see Cordner, e al. 2000; Cox, et al., 2001; Lansdowne, 2000; Smith and Petrocelli, 2001). Rather, these scholars suggested that it is important to measure alternative, race-neutral factors such as differences in driving behaviour, the attributes of the neighbourhood, and the level of police presence.

This view was also reflected in Langan, et al. (2001) in interpreting a finding in their study that “black drivers were more likely than white drivers to be stopped.” Since no information had been gathered on law-violating behaviour, the reported differences could not be attributed to racial profiling.

Smith and Petrocelli (2001:12) also found from their field study that physical differences between persons of different racial or ethnic groups are not always easily discernible, particularly when the person being observed is driving in an automobile.

Several scholars have raised serious concerns about the use of traffic tickets and patrol logs to examine racial profiling (see Cooney, 1997; Weiss and Freels, 1996). Meehan and Ponder (2002:405) caution that “measuring the extent of stops, let alone *who* the police stop, on the basis of tickets and log entries is problematic because a significant portion of patrol activity – including traffic stops and field interrogations – is never recorded.” Meehan and Ponder (2002:405-06) suggest that a more accurate record of the decision making is held in the in-car computers that leaves an electronic trail of officers’ query behavior. These data provide a record of who the police surveil, when and where

they surveil, and what information is requested.” To date, only one research study (Smith and Petrocelli, 2001) of racial profiling has used MDT data.

Worden (1989:704) suggests the use of “protocol analysis” as a method for gathering data on the decision making of patrol officer. This would involve recording the “verbal reports” of the cognitive steps taken by police officers to solve problems and make decisions. Conducting a content analysis on officers’ protocols “could probably shed further light on officers’ search strategies, or the kinds of information (e.g. situational cues)) that they process in choosing courses of action, and on their decision strategies, or the decisions rules that link cues to choices.”

### **A THEORETICAL FRAMEWORK FOR EXAMINING RACIAL PROFILING BY THE POLICE**

A review of studies on racial profiling led Engel, et al. (2002:269) to observe that the research studies on differential stop patterns by the police have not advanced our knowledge of this phenomenon much beyond the early systematic observational research of the 1960’s when it was reported that minority citizens were stopped by the police disproportionately to their population in the community.

The primary reason for this is the absence of a theoretical framework to guide the design of studies of racial profiling that would provide *explanations* for the findings of the data analysis. Engel, et al. (2002:259) have observed that a major problem with interpreting the results of traffic and field-interrogation data is that the studies have been conducted without the guidance of a theoretical framework: “Researchers have simply counted things – the number of traffic stops, citations, and searches conducted by police against white and nonwhite suspects.” What is required, according to these scholars, is research on racial profiling that is conducted within the theoretical context of *explaining* behaviour. Studies to date, for example, have not addressed *why* officers might in engage in decision making based on the race or ethnicity of a person.

In order for activities in social science to be considered scientific research, scholars must use an explicit theory (Bernard and Ritti, 1990). Although purely descriptive research may be interesting, it is *not* scientific research. Bernard and Ritti (1990:5) define scientific theory as “a set of concepts bound together by explicit

relationships and causal priorities.” Applying this requirement to a number of recent studies of racial profiling, Engel, et al. (2002:260) conclude:

The information generated regarding racial profiling should not be considered scientific research; none of the studies reviewed *explicitly* stated relationships between concepts that are temporally ordered. Rather, the underlying theory guiding racial profiling is *implicit*. It is implied that officers make decisions on the basis of citizens’ race, but the potential reasons for this hypothesized relationship are not particularly clear.

According to these scholars, the use of implicit theory in research is problematic, as it often leads to “’sloppy’ investigations, misleading and/or meaningless conclusions, the failure to include critical variables, and a limited understanding of the phenomenon being studied” (Engel, et al. 2002:260). All of these outcomes characterize the studies conducted on racial profiling, particularly in Canada.

### **Implicit vs. Explicit Theoretical Frameworks**

The theory that has guided most studies of racial profiling is *implicit* rather than explicit, that is, it is implied that the disproportionality in aggregate rates of traffic and field stop dispositions is due to officers making decisions based on citizens’ race. Engel, et al. (2002:270) note that this is viewed as “troublesome because of the underlying prescriptive ideal in criminal justice research (i.e. what out to be, as opposed to what actually is)...The prescriptive ideal currently suggests the total eradication of the racial prejudice of individual police officers in decision making. But beyond this are much more complicated questions about ‘what ought to be’”.

The authors (2002:270) cite as an example the comments of a leading criminal justice scholar, George Kelling, on the issue of departmental policies on raced-based stops for gun searches and seizures in an eastern U.S. city: “The good news is that the Portuguese aren’t shooting each other. Unfortunately, the African-Americans are. If I’m going to go looking for guns, am I going to look in Ironbound? (a predominately Portuguese neighborhood). Now, is that racial profiling or is that good planning?”

Posing the question this fashion illustrates the complexity of determining the appropriateness of police practices. This leads Engel, et al. (2002:270) to ask: “Assuming

the accuracy of the factual basis of the policy (i.e. that blacks are shooting each other, but the Portuguese are not) should police use explicitly race-based policies or not?"

The absence of *explicitly* stated theories in studies of racial profiling has resulted in a literature on racial profiling that is, in the words of Engel, et al. (2002:269): "misleading, fails to include crucial explanatory variables, and provides a limited understanding of the phenomenon." What is required is the use of theoretical frameworks within which the variables that have been found to influence the decisions that police officers make in encounter situations can be examined and the causal relationships with outcomes determined.

### **EXPLAINING AGGREGATE DISPARITIES IN POLICE-CITIZEN CONTACT**

Although a number of studies have found disparities in the aggregate rates of traffic stops for white and non-white citizens, no study, to date, has been able to *explain* empirically the causes of these disparities.

There are a number of dependent variables that could be used in studies of racial profiling, including 1) the individual police officer; 2) the police department; and, 3) aggregate rates of police officer and police department behaviour.

#### **Explaining Race-Based Decision Making by Individual Police Officers**

A review of published studies of racial profiling and the police indicates that the most common explanations for differences in rates of traffic and field stops for white and non-white citizens are the prejudicial attitudes of individual police officers. This focus is an extension of the widely accepted relationship between attitudes and behaviour. Although this explanatory framework reflects the commonly assumed connection between attitudes and action, in fact "most quantitative research on police behaviour has found only *weak* relationships between officers' attitudes and their behaviour" (emphasis added) (Engel, et al., 2002:262). (See Meyers, Heeren, and Hingson, 1989; Stith, 1990).

If the behaviour of the individual police officer is used as the dependent variable in the study of racial profiling, the following types of questions would be asked:

- Why do police officers stop more black citizens than white citizens?

- Why do some officers exhibit more racial disproportionality in their decisions while others exhibit less?

### **Explaining Race-Based Decision Making by Police Departments**

Using the police department as the dependent variable in the study of racial profiling would address questions such as:

- Do some police departments have high rates of racial profiling and other have low rates?
- If so, what are the explanations for these differences?

### **Explaining Race-Based Decision Making Through the Use of Aggregate Data**

It is also possible to use aggregate rates of police officer and departmental behaviour as the dependent variable in studies of racial profiling. This would examine questions such as whether race-based decision making has been transformed from the level of individual officers prejudices to race-based departmental policies.

From a review of current research studies of racial profiling, Engel, et al. (2002:261) argue that there is an “absolute need for future research to use theory to guide data collection efforts and interpretations of empirical findings, as well as to inform policy decisions.”

The analysis of the CIPS data conducted by the *Star* controlled for a very few variables and the data did not contain the types of information that would have allowed an examination of whether racial profiling was the cause of the disparities in the aggregate rates that exist between white and blacks in the data set.

### **Explaining Race-based Trend Differences in Aggregate Rates**

To varying degrees all of the published studies have found that minorities were stopped or searched in percentages greater than their population or involvement in crime or traffic violations would warrant. However, none of the studies was able to determine whether these differential stop and search rates were the result of differential treatment of minority citizens by white police officers.



Bernard and Calnon (2000) have argued that there are several alternative explanations for differences in aggregate levels of criminal justice outcomes. One explanation is that there are situations that involve what the author(s) term “discrimination without prejudice”, that is, there are several possible reasons for a discriminatory outcomes rather than prejudice on the part of individual officers. These include pressures on the police organization for efficiency and a lack of resources. These scholars contend that it is important to understand and explain the *actual source of discriminatory outcomes* and that data must be gathered that will allow this type of analysis. (emphasis added).

### **A PROTOCOL FOR RESEARCHING RACIAL PROFILING**

In discussing the need for the development of a protocol for the study of racial profiling, Kruger (2002:7) states:

Experts in the field should design the data collection system and base it on a testable hypothesis. They should include protocols that will ensure that the process will collect empirical data for research purposes and not merely to provide evidence for a particular advocacy group.

A review of the extensive scholarly literature on police decision making as it applies to the issue of racial profiling indicates that there are several sources of data that must be collected and analyzed in order to explain any differences in aggregate levels of police contact and arrest involving blacks and whites. These are:

- *attributes of the specific encounter situation*, including characteristics of the suspects and of the police-citizen encounter,
- *attributes of the context within which the encounter occurs*, including the rates of crime and social disorder in the neighbourhood in which the encounter occurs, public pressure for police enforcement activities, and community-initiated police activity
- *attributes of the individual police officer*, including gender, ethnicity, service experience, decision making style, attitude, and knowledge of the area being

- policed and of the persons and situations in the area that are associated with criminal behaviour
- *attributes of the police organization*, including formal and informal operational policies, the legislative framework within which police services are provided, resource levels, and the attitudes and preferences of senior administrators and supervisors.
  - *attributes of the community*, including demographics, economic features, nature and types of social problems, crime rates, social development initiatives, and the extent of community-police partnerships in identifying and responding to problems of crime and social disorder.

While a portion of these types of data can be obtained retro-actively from police record systems such as the TPS CIPS, other methodologies are required. This would include observations of police officers in the field, de-briefing interviews with officers about their decision making in encounter situations, and the use by officers of a standardized data collection form to be completed for each encounter. This would be similar to forms that have been developed by a number of police departments in the U.S. that are specifically designed to allow for an examination of whether racial profiling is occurring. The data obtained and analyzed by the *Star* was not designed to assess racial profiling, nor can any analysis of these data be used to determine whether the differences in aggregate stop and arrest rates between blacks and whites is explained by racial profiling.

The Police Executive Research Foundation, recognized internationally as a leader in examining policing issues, has set out the requirements for a research protocol for gathering information on police stops (Fridell, et al. 2001). This protocol requires that the following types of information be gathered:

- *the reason for the stop*: Fridell, et al. (2001:131) note the importance of identifying the *reason* for the traffic stop in order to determine whether it was a high or low discretion encounter: “A finding that an officer gives 80 percent of his or her “failing to signal” citations to blacks can be viewed differently than a finding that an officers gives 80 percent of his or her red-light citations to blacks.” The latter finding is less likely to be indicative of biased policing than the former.

- *whether the stop was reactive or self-initiated*: Reactive stops are those that are precipitated by a call for police service or other external demand, while a stop that an officer initiates entirely on their own is self-initiated. Including this variable in the analysis would allow one to differentiate between the incidents in which the officers select whom they will engage and those in which they engage as a result of a call for service. The former is more relevant to an assessment of racially-biased policing (Fridell, et al., 2001:131).
- *the length of the stop*: This variable provides a potential measure of equitable vs. disparate treatment. With this information, it would be possible to determine whether the length of a stop varies by ethnicity, controlling for relevant variables such as the reason for the stop (Fridell, 2001:132).
- *whether driver characteristics were observable before a stop*: This would provide information on the percentage of stops in which the police officer was able to discern the ethnicity of the driver prior to the stop.
- *whether a search was conducted during the stop and the outcome of the search, if one was conducted*: Assessing racially biased vs. equitable policing requires examining not only whom the police engage, but also what happens during the engagement.

Many U.S. law enforcement agencies are developing or currently using data collection forms completed by the officer that are based on the protocol developed by PERF.

Rameriz, et al. (2000) have also identified the types of information that would be required to explore whether officers are abusing their discretionary powers and engaging in racial profiling. The intent would be to identify the routine patterns of behaviour of patrol officers and to determine if there are any “outliers.” The analysis could be done for individual officers or for individual neighborhoods. The authors (2000:36) explain how these data could be utilized:

Data collection could determine, for example, that a typical officer stops 10 cars per shift and issues 4 citations. Once this information is known, the behavior of all officers can be evaluated by this measure. If an officer is stopping 50 cars in a shift, that officer may be working very hard in an area or may be causing increased community resentment in a particular neighborhood. Similarly, if an officer is stopping 50 cars and only issuing 4 citations, this may identify a training issue regarding why the hit rate for

this officer is so much lower than others. There may be legitimate reasons for this kind of variation, but currently, most police departments do not even know whether this kind of variability exists.

The collection of this type of information would also allow departments to track changes over time and would allow the departments to respond more quickly to complaints from community groups of racial profiling.

Fridell, et al. (2001:142) observe that “Data collection is both a social science and a political endeavor” and recommend that the analysis of racial profiling data should be undertaken by independent researchers with a knowledge of law enforcement and of the specific issues associated with analyzing police identification/stop data.

In the present case, the conducted analyses on data that were not gathered for the purpose of assessing the presence of racial profiling and the articles were written by persons without academic credentials in the area of police practice and decision making. Subsequently, the statistical analyses were verified by an individual with no professional expertise in policing and police practice.

#### **DATA ANALYSIS AND INTERPRETATION: THE CHALLENGES OF PROVING RACIAL PROFILING IN POLICING**

A number of observers have raised the question as to whether social science researchers are able to assess whether there is a causal main effect between citizen race/ethnicity and police behaviour. In addressing this question, Fridell, et al. (2001:136) state:

To draw definitive conclusions regarding stop data that indicate a disproportionate engagement of racial/ethnic minorities, we would need to be able to identify and disentangle the impact of race from legitimate factors that might reasonably explain individual and aggregated decisions to stop, search, and otherwise engage people. *This is not possible.* (emphasis added)

This position is shared by the authors of a report produced by the U.S. General Accounting Office (2000:18). who concluded that, due to methodological challenges “we cannot determine whether the rate at which African-American or other minorities are

stopped is disproportionate to the rate at which they commit violations that put them at risk of being stopped.”

From an examination of the issues surrounding the analysis and interpretation of data with respect to racial profiling, Fridell, et al. (2001:137) concluded: “There are not as yet satisfactory ‘best practices’ in the realm of data interpretation and analysis.”

## **RESEARCH FINDINGS ON RACIAL PROFILING**

“Because of the limited number of analyses and their methodological limitations, we believe the available data do not enable firm conclusions to be made from a social science perspective about racial profiling.”

-- Ekstrand, 2000:10

Scholars have studied the relationship between police stop-and-search practices and racial characteristics of individual drivers. Despite the extensive scholarly literature on racial profiling in the U.S., there is still much that is unknown about the phenomenon.

Commenting on the current state of the empirical research on racial profiling in the U.S., Rameriz, et al. (2000:8) state:

Anecdotal and empirical evidence has helped stated and local activists, community members, and government officials understand the problem of racial profiling and has raised new questions about police stop-and-search practices. However, more expansive and systematic data collection is needed to address the concerns surrounding police practices of racial profiling.

From an extensive review of the issues surrounding racial profiling and an in-depth examination of the attempts of several police services in the U.S. to develop the capacity to gather data on a systematic basis that will facilitate monitoring of line-level officers decision making in encounters with citizens, Rameriz, et al. (2002:36) conclude:

The limited studies available concerning disparate stop-and-search patterns during traffic stops raise complex analytical issues...The three most vexing problems involve assessing why an individual officer decides to stop a particular vehicle, measuring the populations that put themselves at risk of being stopped by their actions or the actions of others (a base violation rate), and comparing pedestrian stops to appropriate street populations (or street violator populations).

The Home Office (UK) Policing and Reducing Crime Unit has produced several reports based from what, to date, is the most extensive study of police stops and searches. The project included interviews with over 100 police officers and 340 hours of observation of operational patrol officers on shift. Among the findings of the study that are relevant to any discussion of racial profiling were:

- There was variation among officers in their decisions to carry out stops and searches
- The working practices of police officers revealed that suspicion is based on a range of different factors in which a person might appear more or less suspicious to police officers
- There were clear differences in the level of suspicion required by different officers to do stops and searches

(Quinton, Bland, and Miller, 2000:64)

### **Creating Comparative Benchmarks**

Once a police service begins to gather traffic-stop data, it is important to establish how the data will be analyzed and interpreted. In order to rule out alternative explanations for disparities in police-citizen contact, it is necessary to develop comparison groups against which to evaluate vehicle stop data. These comparison groups must reflect the demographic composition of groups at risk of being stopped by the police in an unbiased world. (Fridell, et al., 2001:136) provide the following example:

A department collecting data only on traffic stops would, ideally, want to compare the demographics of those stopped with the demographics of those at risk of a stop, taking into consideration numerous factors including, but not limited to, driving quantity, driving behavior, vehicle conditions, and police presence. In an ideal world, we would have this information for each type of stop (e.g. red-light violation, speeding violation)

Since this type of information is impossible to gather, the best practice is to create standards. If an agency wanted to know if the number of recorded traffic stops for minority drivers in a specific area was potentially too high, it would want to know the probability of the average minority driver in that area being stopped for a traffic violation

(based on such objective factors as driving quantity, driving behavior and level and type of enforcement in the area. This would provide some indication of the “at risk” groups in the area. A key question that must be answered is “If substantial disparity is found in the aggregate rates of police-citizen contact between whites and non-whites, is there a non-discriminatory explanation for the disparity?”

Fridell, et al. (2001:118) note that a critical challenge confronting governments and police services is the development of “benchmarks” or other standards that can be used to determine whether racially biased policing is indicated by the data that are gathered:

In effect, the process of analysis and interpretation is one of trying to understand the full context of a stop (e.g. drivers’ demographic makeup, enforcement activity including the assignment of field officers), and of identifying what factors within that context affect the police decision to...stop and search the citizen. *This is a very challenging endeavor* (emphasis added).

These authors highlight the importance of the *context* within which the encounter occurs, a major deficiency of the CIPS data and of the analysis completed by the *Star* that will be discussed in Part II.

In the absence of benchmarks, it is not possible to use information on traffic stops to determine whether police officers are engaged in racial profiling. Rameriz, et al. (2000:37) use an example to illustrate this point:

By themselves the characteristics of traffic stops are difficult to interpret. For example, if, after collecting the data, a particular city discovers that 65 percent of its traffic-stops on a particular highway are Hispanic drivers, that percentage by itself does not reveal much. The city must compare that percentage to an appropriate benchmark, which ideally could be the proportion of Hispanic traffic violators on the highways where the stops occurred. Thus, the 65 percent stopping rate would be proportionate if 65 percent of the violators on this highway were Hispanic, but would be disproportionate if only 20 percent of the violators were Hispanic. The city could then determine whether the disparity correlates with a disproportionate allocation of police resources to minority residential areas and, if it does so, whether this correlation explains the disparity.

The author of the U.S. General Accounting Office (Ekstrand, 2000) study of racial profiling also questioned the validity of comparing the racial composition of a

group of stopped motorists on a given roadway in a given location with the racial composition of a population that may be vastly different: “It would be more valid to compare the racial characteristics of stopped motorists with those of the traveling population who violated similar traffic laws but were not stopped” (Ekstrand, 2000:10).

In the U.S., a racial disparity is only legally significant under the Equal Protection Clause of the Fourteenth Amendment if individuals stopped *solely* on the basis of their race were similarly situated with respect to others who were not stopped. In other words, the correct comparison group is not to the people living in the neighborhood or driving on the highway who did not engage in the same conduct as the person stopped. Rather, the complainant must show that those who did engage in the same conduct were not stopped because they were not of a minority race.

A study of police stops on the New Jersey Turnpike found that black drivers were twice as likely to speed as white drivers, and were even more prominent among drivers traveling over 90 miles per hour. This study was able to establish a “violator benchmark.” In discussing this study, MacDonald (2002b:1) notes: “To show that the police are stopping ‘too many’ members of a group, you need to know, at a minimum, the rate of lawbreaking among that group – the so-called violator benchmark. Only if the rate of stops or arrests greatly exceeds the rate of criminal behavior should suspicions be raised.”

In a study of police searches for illegal drugs in motor vehicles, Knowles and Persico (2001) found that there was no racial bias in the decision making of the police. In fact, police searches that were designed specifically to find large quantities of drugs were biased toward white drivers.

Fridell, et al. (2001:125) also suggest that police services gather information on police stops that do not result in official sanctions. And, it is important to note that vehicle and pedestrian stops represent only a *fraction* of the activities of police officers. Data from these types of encounters are not sufficient to establish that a police department and its officers engage in racial profiling.

Policing agencies in the U.S. have found that while developing benchmarks for traffic stops is easier than for other types of police activities, it is still a great challenge (Fridell, et al., 2001:122). For example, gathering data only for traffic stops excluded obtaining information about general investigative stops of motorists. To this end, Fridell,



et al. (2001:124) recommend that police agencies gather information on *all* vehicle stops – *traffic stops* where the motorist has been stopped for violating motor vehicle laws, and *vehicle stops*, which include those instances in which a vehicle is stopped because the driver matches a suspect description. As well, data on time, date, and location allow for assessments of racially biased policing by time and geography. It can be expected, for example, that driving behaviour will vary greatly across these variables. Drivers, even those with varying types of behaviours, can be expected in specific areas on specific days, i.e. rush hour traffic.

One component of the extensive study conducted of traffic stops and searches by the Home Office (U.K.) Policing and Reducing Crime Unit examined populations available to be stopped and searched in five police force areas. “‘Available’ is taken here as describing people who use public places when and where stops and searches take place” (Miller, 2000:iii). This research was designed to respond to concerns that comparisons between the ethnic breakdown of stops and searches and the ethnic breakdown of local resident populations are a misleading indicator of ethnic biases in stop and search activity.

The findings of the study revealed that:

- *measures of resident population give a poor indication of the populations actually available to be stopped and searched.*
- *resident population measures are very different from populations actually available to be stopped and searched.* Compared to the residential profile as measured by census data, in pockets of high stop and search activity, young men were over-represented in the available population, and the elderly were rarely observed by comparison. Many of the persons available to be stopped and searched were not local residents. On-street interviews with pedestrians in pockets of high stop and search activity revealed that over half those interviewed did not reside locally.
- *“available’ populations tend to include larger proportions of people from minority ethnic backgrounds than resident populations.* In four of the study five sites, persons from minority ethnic backgrounds were over-represented in the available population as compared to the resident population. *This means, that all*

*else being equal, it would be expected that minority ethnic persons would be stopped or searched by the police more often than their numbers in the resident population would suggest (emphasis added)*

- *when statistics on stops and searches were compared with available populations, they did not show any general patterns of bias against those from minority ethnic backgrounds.*
- *stops and searches were generally targeted at areas where there were crime problems.* A comparison of geographic patterns of stops and searches with geographic patterns of recorded crime indicated that there was a fair degree of consistency between patterns of crime and patterns of both stops and searches. Overall, the research showed that stops and searches tended to focus on areas where there was more crime.

(Miller, 2000:iii; 83-86)

These findings led Miller (2000:84) to conclude that it is important for studies of racial profiling to identify and to distinguish between the resident and available populations, bearing in mind that the larger the area considered, the more likelihood that there will be a reduction in the available population that is not local. This, in turn suggests that the levels of disproportionality will vary according to the size of the areas under consideration

## **Two Types of Comparative Benchmarks**

There are two types of comparative benchmarks that can be used in an attempt to determine whether police officers are engaged in racial profiling:

- **external benchmarks:** these involve developing an estimate of the percentages of persons who are at risk for being stopped on roads that are patrolled by the police service by racial or ethnic group. This may include the racial percentages of vehicle drivers on particular roadways. The use of residential population data, broken down by race, to estimate the racial percentages of persons using the jurisdictions roads may be useful; however, it is important to consider the age demographics of the different racial groups, because these may vary and it is

important that the residential benchmark be applied only to those individuals who are of legal driving age.

As Rameriz, et al. (2000:36) note: Any attempt to examine whether police officers are engaged in racial profiling in exercising discretion in traffic stops must utilize data that have been gathered to provide some aggregate estimates about the behavior of officers as well as the criminal behavior of certain population groups.”

- **internal benchmarks**, that involve analyzing stop data to compare officers with other officers, units with other units, and geographic areas with other geographic areas. These comparisons are made within “matched” sets of officers, units, etc. to control for circumstances and context. For example, officers working the same shift in the same district could be compared with one another. Districts with similar demographics, criminal activity, and traffic activity could be compared. Analyses could also compare officers, units, and areas over time to document trends and patterns. Through this type of analyses, “outliers” – officers/units or districts that seem to intervene with racial/ethnic minorities at higher rates than their matched counterparts – can be identified.

The collection of these types of data on traffic stops or stops-and-searches would allow a police department to track changes over time.

### **Types of Comparison Data and Their Limitations**

Comparison data are also useful in determining whether racial disparities in police enforcement activities are due to racial profiling. Among the various types of comparison data and their limitations are:

- *Census data*: do not necessarily represent people at risk of law enforcement intervention, but rather only who lives in the jurisdictions
- *Persons with driver’s licenses*: while this information provides some indication of the persons who are on the road and, therefore, at risk of being stopped, these data do not provide for a true comparison group in that they do not provide for differential law enforcement deployment on the road, e.g. “hot spot” enforcement, do not provide for variations in driving behaviour in terms of quantity or quality, e.g. more aggressive drivers are more likely to be stopped, nor information for

- purposes of assessing which drivers might be at a greater risk of an investigatory (as opposed to a traffic) stop.
- *Persons involved in vehicle accidents*: an advantage of these data is that it provides a measure of poor driving behaviour; however, does not necessarily represent people who are at risk of being stopped for traffic violations or investigatory reasons
  - *People arrested*: although some jurisdictions in the U.S. have compared their police stop data by race/ethnicity with that of the Uniform Crime Reports arrest data by race/ethnicity, Fridell, et. al. (2001:140) assert that “These are unacceptable comparison data” for a variety of reasons, including the fact that arrest data do not measure actual crimes and, even if these data did, criminal behaviour is not satisfactory in indicating *what* puts a person at risk for traffic or investigatory stops.
  - *Observational data*: can provide valuable standards in that they are better for estimating the race/ethnicity of people at risk for being stopped. However, even observations have limitations, chief among them being that they allow assessments of only certain types of traffic violations.

### **The Issue of Base Rates and Benchmarks**

Engel, et al. (2002) notes that studies of racial profiling on traffic stops have used different “base rates” or “benchmarks”. Although one-half of the studies they reviewed concluded that the disparity in the aggregate rate of stops is explained by individual officer prejudice, these authors note *there is not agreement as to what constitutes a reliable or valid base rate, which renders these conclusions premature.* (emphasis added)

Engel, et al. (2002:256) describe the problem confronting researchers as follows:

Once researchers have determined how often officers stop, question, warn, search, cite, and arrest nonwhite suspects, they must create ratios or comparisons, to some other population. It is this comparison that is problematic for researchers. Should these rates be created by comparing the percentage of suspects stopped by the police who are nonwhite to the percentage of nonwhite citizens in the population (**note**: this is what was done in the *Star* analysis), the percentage of nonwhite drivers, the percentage of nonwhite drivers who engage in traffic offences, or other illegal behavior, or some other denominator?

Among the studies review by Engel, et al. (2002), several used racial percentages of the population as the standard of comparison while others used racial percentages of the driving age population.

Cleary (2000:29) raises serious concerns about the common approach in racial profiling studies to use the area population breakdowns, by racial subgroup, as the measure of the baseline standard for comparison:

Such a decision essentially assumes that the racial subgroups of area residents have equal or nearly equal rates of unlawful behavior. However, in any given area this assumption may be erroneous. In addition, in some areas, people from outside the area might be responsible for much of the crime that occurs within it. Either way, the study's findings may be invalid.

Cleary (2000) also notes that there are even problems with those studies that have developed a baseline standard through systematic observation of the apparent racial composition of drivers using specific roadways. However, this approach assumes that traffic and equipment violation rates and other causes for police stops are equivalent among the various racial/ethnic groups using the roadway, which may not necessarily be the case. Further, Cleary (2000:29-30) notes:

[T]he racial composition of drivers in the city or neighborhood might vary considerably by hour of the day, day of the week, or even season of the year, and any given racial subgroup might itself vary in its propensity for unlawfulness from one time period to another.

Smith and Petrocelli (2001:12) have pointed out that “Establishing baseline rates for a large country or municipality is difficult due to the extreme variations in racial composition between different geographic areas or neighbourhoods within the same political subdivision. In the present case, the Census tract data do not match the boundaries of the TPS patrol divisions making it impossible to develop an accurate profile of each patrol division.

Professor Wortley and the authors of the *Star* articles defend the use of population figures by suggesting that there is no evidence that blacks violate the traffic code more often or to a more serious degree than white drivers, or that blacks behave more suspiciously or disrespectfully during traffic stops than white, or that blacks drive

specific sections of highway or frequent certain areas any more or less than whites. However, as Engel, et al. (2002:257) point out there is the possibility that some segments of the population, e.g. young black males, may drive more aggressively, are more likely to violate traffic laws, and/or to commit more serious violations. Few studies have examined differences in law-violating driving behaviour based on the race/ethnicity of the driver.

The absence of a reliable and valid base rate is related to the fact that most studies of racial profiling do not have a theoretical framework to guide the data collection efforts or to interpret the results. More specifically, these studies failed to measure any *explanatory factors* beyond the simple aggregate rate of stops. This diverges from almost all other research on policing conducted over the past 30 years, which has focused on explaining police behaviour. In contrast, the data collection efforts to examine racial profiling have neglected the need to explain *how and why officers make decisions*. (Engel, et al. 2002:251) (emphasis added).

### **ANECDOTAL EVIDENCE AND STUDIES OF RACIAL PROFILING**

A considerable portion of the literature in the U.S. and the vast majority of the literature in Canada on racial profiling is anecdotal. Anecdotal evidence includes complaints by members of communities of colour that they are being stopped for petty traffic violations such as under-inflated tires, failure to signal properly before changing lanes, and vehicle equipment failures. Personal anecdotes and stories reflect the experiences of those who believe they have been stopped by police officers because of racial profiling.

Wortley's 1997 study of perceptions of a sample of Torontonians and Tanner and Wortley's survey of high school students' experiences with the police are anecdotal – respondents were asked to recall instances in which they were stopped by the police.

### **The Problems with Using Anecdotal Studies in Racial Profiling Research**

Although anecdotal research can be one component of any study of racial profiling, it is in itself, insufficient to establish that racial profiling is being used by a police

department or by individual officers in a particular police department. This evidence must be triangulated with other types of data.

Anecdotal data have a number of limitations, including:

- *incidents are generally based on recall. A person's memory can be selective and often, only the more unpleasant contacts with the police are remembered.* Fridell, et al (2001:14) note that "As practitioners well know, people are much more likely to share stories of *negative* police-citizen interactions (regardless of citizen race) than stories of *positive* interactions."
- *a considerable portion of anecdotal evidence relates to events that happened to persons other than the respondent.* In analyzing the information provided by citizens and police in focus groups that addressed the issue of racial profiling, Fridell, et al. (2001: 14) found that "While some minorities shared their own stories of what they perceived to be 'racial profiling', virtually *all* the minorities could share stories of incidents involving other people." (emphasis in original).
- *in the absence of field observations, it is very difficult to verify anecdotal data*
- *for a variety of reasons, the anecdotal evidence may not be an accurate reflection of the dynamics that occurred in the encounter situation.* People often have selective recall when asked to relate past events and may exclude important items of information.
- *respondents may understate or neglect to mention any culpability on their part that may have precipitated a reactive or proactive police response*
- *anecdotal evidence is often devoid of the context within which the incident occurred.* It also does not include information from the police officer involved in the encounter, i.e. why the police officer made the decision to respond, to stop the vehicle, or to stop and search a person. There will likely also be little or no information on the complainant, as many are anonymous callers not known to the respondent.
- *respondents often have a wide variety of descriptions and definitions for what constitutes "racial profiling"; this makes it difficult to standardize the experiences of respondents*

Anecdotal evidence, then, is most useful as a way in which to identify areas of investigation that can then be explored using multiple data sources and a valid analytical framework. *Anecdotal evidence is, in itself, not sufficient to establish causality.* Most investigations of racism and the criminal justice system in Canada have relied heavily upon anecdotal evidence.

In a discussion of the potential and limitations of using anecdotal evidence in any examination of racial profiling, Fridell, et al. (2001:9) state: “However compelling, anecdotal evidence of racially biased policing is not sufficient to determine the nature and extent of the problem.”

Not all encounters that persons of colour have with the police are negative. A recent national survey conducted of police-citizen contacts in the U.S. found that African-American drivers were more likely than the white drivers to be stopped, have their vehicles searched, and be ticketed by the police (U.S. Bureau of Justice Statistics, 2001). However, 75% of the African-Americans who had been stopped indicated that the police had a legitimate reason to stop them and 82% reported that the police behaved properly during the stop (the figures for whites were 86% and 91% respectively).

### **CITIZEN PERCEPTIONS OF POLICE BEHAVIOUR**

There is extensive body of U.S. literature on the perceptions of residents of racial profiling and the consequences of these perceptions for the police role in the community. However, one of the difficulties (as noted above) is the way in which community residents tend to conceptualize the term “racial profiling.” Fridell, et al. (2001:4) found that, in focus group discussions involving the police and community residents, “most *citizens* were using the term “racial profiling” to discuss *all* manifestations of racial bias in policing...the *police* participants were likely to define “racial profiling” quite narrowly – as law enforcement [particularly vehicle stops] based *solely* on race.” (emphasis in original)

Because of the different definitions given to racial profiling, Fridell, et al. (2001:27) note that it is impossible to determine the exact amount of biased policing that occurs, “nor can we know the extent to which citizens’ *perceptions* of biased policing do, in fact, accurately reflect officer behavior and motivation.”



Further, the finding that a sample of minority drivers, in retrospect, perceive that they were stopped by the police as a result of racial profiling is of little use unless there is corroborative evidence. Citizens are generally unaware of the myriad of factors that contribute to the decision of a police officer to make a traffic stop or to stop and search a person. This includes the requirements of legislation such as the previously mentioned provisions in the Canadian Criminal Code that *require* police officers to detain persons until a positive identification can be established.

These findings raise serious questions about the validity of using data based on citizen perceptions to establish that a police department and its officers engage in racial profiling. The perceptions that citizens have of police behaviour and decision making is an important component of any attempt to understand how the police are carrying out their mandate and how the efficacy and effectiveness of policing services can be improved. There is a statistical link between being stopped and searched and having lower confidence in the police (Miller, 2000). However, the use of data on citizen perceptions is not, in itself, sufficient to determine whether or not a particular police service, or its officers individually and collectively, are engaged in race-based policing.

## **THE RACIAL PROFILING DEBATE IN CANADA**

The research and published literature on racial profiling is a U.S.-based literature. The majority of the published scholarly literature on racial profiling has been conducted in the U.S. and, to a lesser extent in the UK. In the U.S., there is an emerging body of scholarly research as well as a considerable literature on the theoretical dimensions of racial profiling and on the methodological issues involved in designing studies to assess whether this practice is present in police services.

To date, the debate over racial profiling in Canada has been largely a political debate, characterized by a lack of sound empirical research, unsubstantiated assertions, broad generalizations, and the over-simplification of a very complex issue. In comparison with their US counterparts, Canadian police services have yet to begin the process of developing protocols for the collection of information at the line level that could be used to explore issues related to race-based decision making by patrol officers.

Those parties asserting that racial profiling is an integral component of policing view this practice as an extension of a justice system that is endemically and systemically racist. From this perspective, police officers, judges, parole board members, and other criminal justice personnel operate within a system that treats Aboriginal persons and visible and cultural minorities in a discriminatory fashion. The racism is systemic and permeates all facets of the system.

There is, at present, no body of empirical research on Canadian police services that can be used as the basis for discussing racial profiling. Neither is there sufficient information that would provide the basis for the development of policies and procedures designed to address the practice should it be found to exist or to ensure that racial profiling does not become part of the standard operating procedure of patrol officers. The few studies that have been produced focus on citizen *perceptions* of police behaviour and decision making or rely on anecdotal data. Although both types of data are important components of any investigation into race-based policing, in themselves these types of data are not sufficient to establish that the police are engaged in racial profiling.

Further, the studies that purport to establish that Canadian police forces use racial profiling as an integral part of carrying out their activities do not meet the level of methodological rigor that is required to consider the findings valid. A review of the published literature in Canada reveals:

- the materials that have been published are largely anecdotal, with a heavy reliance on first-person accounts
- the studies do not employ multiple data sources nor use triangulation of various types of data
- the findings are based on simple statistics, most often percentages and the focus is on establishing simple associations between one or two variables. There are no published studies in Canada that use data and statistical techniques that allow for multi-variate analyses
- the literature on race and the criminal justice system in Canada is heavily politicized and lacks a strong empirical component
- there have been few studies of race and crime or the involvement of persons of colour in the criminal justice system

- the majority of materials on race and the criminal justice system have been gathered by commissions of inquiry that are not constrained by the rigors of scientific data collection and analyses.
- studies that are presented as evidence of racial profiling, including those by Wortley and his colleagues, are devoid of a theoretical framework that would provide *explanations* for the findings revealed in the analysis of data, including data on public perceptions of encounters with the police and disparities in aggregate stop, search, and arrest rates between whites and blacks.

Studies of racial profiling by the police in Canada have been informed primarily by citizen perceptions of police behaviour. In support of the assertion that the TPS engages in systemic racial profiling, the *Star* cites the research conducted by Wortley and by Tanner and Wortley. Research scholars, however, have documented the difficulties with using information based on citizen perceptions of police behaviour in any attempt to establish that a police force and its officers use racial profiling.

### **A Critique of the Wortley Research on Citizen Perceptions of Police**

Throughout the *Star* articles reference is made to a study conducted by Professor Scot Wortley of the University of Toronto entitled “The Usual Suspects: Race, Police Stops, and Perceptions of Criminal Justice” (1997) and another conducted by Tanner and Wortley.

The *Star* (October 20, 2002) refers to the 1997 study by Wortley as “among the most detailed work on racial profiling done in Canada.” While Wortley’s study may have the distinction of being one of the only investigations completed to date, it has a number of very serious limitations that preclude the use of its findings to support allegations of racial profiling by police. A key limitation is that Wortley studied the *perceptions* of a relatively small (1,300) sample of residents in Toronto, who were asked about their contacts with the police. As previously noted, for a variety of reasons, citizen perceptions alone cannot be used to establish the existence of racial profiling. The *Star* reports Wortley’s findings that “About 28 per cent of blacks reported being stopped at least once in a two year period, compared to 14.6 per cent of whites, and 18.2 per cent of Chinese.”

These data are not sufficient to support the conclusion that racial profiling exists in the TPS.

In the absence of a guiding theoretical framework, Wortley creates the following scenario:

“Picture two groups, one black and one white of equal size. Then consider that in each of those groups the rate of drug dealing is precisely the same. If authorities were policing these groups identically, with race playing absolutely no role, the number of dealers arrested from each group should always be the same.”

This scenario is not only devoid a theoretical framework, but is premised on faulty assumptions and reflects little of the reality of police work and of the contexts within which police-citizen interaction occurs. This scenario assumes:

- equal visibility of suspects and vehicles
- equal police presence in all areas
- equal police resources to enforce the law
- no intervening variables in terms of the decision to target certain areas
- equal availability of black and white populations to be stopped or searched
- an equal population of citizens of all races who are violating the law and subject to enforcement

The *Star* (October 20, 2002) also uses the findings from a study conducted by Tanner and Wortley in which the authors conclude that “racial profiling directly contributes to the over-representation of black people in the criminal justice system.” This study involved surveying Toronto high school students about their experiences with the police. Again, this is a study of *perceptions* and was based on having respondents recall incidents involving contact with the police. There was no validation of the incidents and no information on the specific contexts within which the encounters with the police occurred. These data most certainly do not establish that “racial profiling directly contributes to the over-representation of black people in the criminal justice system.” In fact, there are no data presented to establish a “direct” contribution.

### **A Critique of “Res Ipsa Loquitur and Racial Profiling” (Tanovich, 2002)**

An example of the theoretical and methodological weakness that characterizes Canadian writing (as opposed to research) on racial profiling is provided by a recent article in *The Criminal Law Quarterly* entitled “Res Ipsa Loquitur and Racial Profiling” (Tanovich, 2002). The Tanovich article is replete with unsubstantiated assertions and reads like an extended editorial rather than a scholarly research article. In support of his argument (2002:330) that “racial profiling by police is widespread in Canada” Tanovich uses the findings of self-report surveys, anecdotal evidence, court decisions, and the over-representation of blacks in the criminal justice system. Significantly, Tanovich fails to acknowledge and consider the limitations of these data sources as documented by the sources reviewed above and confuses association with causality. None of the materials presented by Tanovich establish that police officers use racial profiling.

The author then proceeds to discuss selected U.S. studies to support his contention, often confusing a number of concepts. For example, in discussing conflicting findings from recent U.S. studies on traffic stops, Tanovich (2002:331) states: The issue that should concern us is not whether there is a plausible alternative explanation for the disproportionate stops but rather whether the police are, in fact, engaging in *selective enforcement*.” (emphasis in original). Selective enforcement and racial profiling are two distinct practices. The author (2002:333) cites disproportionate arrest rates as evidence of racial profiling. However, research conducted on racial profiling in the U.S. reveals that using raw percentages based on the number of persons from a visible minority that are stopped is not sufficient to establish, *causally*, that racial profiling is being practiced.

Tanovich also makes extensive reference to “anecdotal evidence” centering on the personal stories of citizens about their negative encounters with the police. Tanovich cites the results of a Gallup Poll in the U.S. in which 77% of African-Americans believed that racial profiling in law enforcement was widespread. And that 76% of black respondents in a 1994 poll believed that the police treated black persons differently than whites. However, a review of the research literature on racial profiling has very clearly established the limitations of these types of data, particularly in any attempt to explain disparities in police-citizen contact.

Tanovich also highlights the over-representation of blacks in the criminal justice system as evidence that the police engage in racial profiling. This too is insufficient to

establish that the police are racially biased or that the criminal justice system is racist. Similar statistical information on Aboriginal incarceration rates vis-a-vis their proportion of the population is often used to argue that the justice system is racist toward Aboriginal peoples. However, empirical research studies provide significant evidence that one reason that Aboriginal peoples are over represented in correctional institutions is that this population is at higher risk to commit violence offences and other types of criminal behaviour that is most likely to result in a custodial sentence. There are a myriad of historical and contemporary reasons why Aboriginal persons in some jurisdictions and in some communities may be at higher risk to engage in violent behaviour. It has not been established that the Canadian criminal justice system operates in a systemic racist manner toward Aboriginal peoples.

### **Do the Police Cause Crime and Create Criminals?**

Critics of police practice contend that, through discriminatory practice such as racial profiling, the police create classes of criminals and that a disproportionate percentage of those so created are persons of colour. Extending this argument would lead one to conclude that, had the police not responded to a particular incident, that the incident would not have occurred. Tanovich (2002:339) argues that racial profiling by the police has resulted in “the creation of a disproportionately large class of racialized offenders” thereby contributing to the belief that there is a link between race and crime. This, in turn, has stigmatized the black community. Tanovich makes no mention of the fact that the large majority of police-citizen contacts (up to 90% in many policing environments) are in response to calls for service from the community. This suggests that, in most instances, it is community residents that make the decision to mobilize the police. This may also apply to traffic stops. Annually in Canada, 3 million cellular telephone calls are made to the police to report suspicious persons, vehicles, driving infractions, and suspected impaired drivers.

Despite having presented no empirical evidence to support his claims and utilizing data sources that have significant limitations in any discussion of racial profiling, Tanovich (2002:340) concludes that “with respect to whether racial profiling is

a prevalent police practice, I suggest that the facts speak for themselves.” A very surprising conclusion given that no “facts” have been presented.

This line of reasoning ignores all that is known about criminal behaviour generally and police practice specifically. Generally, it has been well documented by social scientists and criminologists that certain groups in society, i.e. young adults between the ages of 18-24 are at a higher risk for becoming the victims of crime and to be involved in the type of criminal activity most visible to the police. In addition, certain groups in Canadian society, because of historical and contemporary circumstances, are at a high risk of becoming involved in violent criminal activity. There is not, then, an equitable distribution of persons in terms of being “at risk”, nor is there an equitable distribution of the likelihood that persons will come to the attention of the police, be subjected to a vehicle stop or search of their person, or be arrested.

#### **THE APPLICABILITY OF U.S. POLICING RESEARCH AND FINDINGS TO THE CANADIAN CONTEXT**

The extent to which the experience of Blacks in the U.S. can inform discussions of race and the criminal justice system in Canada has remained largely unexplored and it is not possible at the present time to identify the points of convergence or divergence. In contrast to the U.S., issues involving race and the criminal justice system have emerged as the focus of debate and controversy only in the past decade and the discussions have related to very specific populations as opposed to the general Black population. The focus has been on African-Canadians in Nova Scotia who have a long history in that province and on more recent arrivals from Caribbean countries in the urban centres of Montreal and Toronto.

Similarly, in contrast to the U.S., there is not an extensive body of published scholarly research on race, crime, and the criminal justice system. This has been precluded, in part, by the fact that criminal justice agencies in Canada rarely gather race-based data. As well, it is a consequence of heavy reliance on government-sponsored and government-directed research and the paucity of research funding from independent sources.

Any use of U.S. materials in support of the study of policing in general, and racial profiling in particular, should be mindful of a number of factors, including the following.

### **The History and Development of Policing**

Caution should be exercised in assuming that the findings from research studies on racial profiling conducted in the U.S. can be used as the basis for discussion of this topic in Canada. Although there are many similarities in policing between the two countries, there are significant differences in the history and structure of policing, the social, economic, political, and legislative context within which police officers carry out their duties, and in the structures of police accountability. Among the more unique features of Canadian policing are the RCMP, the provision for the RCMP and the provincial police forces in Quebec and Ontario to provide policing services under contract. There is also considerable variability across Canada in how policing services are delivered and in the “task environments” in which police officers carry out their duties (Griffiths, Whitelaw, and Parent, 2000).

### **Race and Policing**

The experience of Black Americans in the U.S. has a long history, highlighted by institutional slavery, a Civil War, the Civil Rights movement, and an extensively documented history of abuse and repression. There is an extensive legislative history involving Blacks in U.S. society as well as hundreds, if not thousands, of decisions from the U.S. Supreme Court that have address all facets of the rights and treatment of Blacks in U.S. society. No such body of jurisprudence exists in Canada.

### **The Theory and Method of U.S. Research on Racial Profiling**

Reference to the U.S. literature is most helpful in an examination of the conceptual and definitional aspects of racial profiling and in exploring how jurisdictions in the U.S. have confronted and addressed the issue. The scholarly literature from the U.S. also reveals the complexities of the issue of racial profiling and the various ways in which governments and police services are seeking to determine the extent to which



racial profiling is a component of police practice and the policies that are designed to monitor and evaluate the decision making of line-level police officers.

### **CONCLUDING REMARKS**

This review has established that the threshold for determining that a police service is engaged in systemic racial profiling is high and that any investigation requires the collection of data that will allow the identification of the *causes* of any disparities in stop and search rates. A theoretical framework must be used that is not implicit in its expectations and a variety of methods must be used to gather data on the officer, the encounter, the neighbourhood, the police service, crime, demographics, and social and economic factors that surround police citizen encounters. This is necessary before any statements can be made as to whether police officers are engaged racially-biased decision making and/or that racial profiling is an operational policy of the police department. Merely establishing associations between differential rates of traffic citations for whites and blacks, using as a benchmark their respective proportion of the population in the city, falls far short of the standard for scientific research. So do studies that rely on the perceptions of community residents and on anecdotal evidence from respondents who have been stopped by the police.

Research scholars who are experts on police behaviour and police decision making have concluded that a combination of the absence of valid theoretical frameworks and the limitations in the methods and data used by studies conducted on racial profiling preclude a determination as to whether police services and their officers are engaged in racial profiling. The evidence presented by these scholars in support of this position is persuasive and is grounded in established protocols for conducting scientific inquiry.

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**PART II.**  
**A CRITIQUE OF THE ANALYSIS, FINDINGS, AND CONCLUSIONS OF THE**  
**STAR AND PROFESSOR FRIENDLY**

The following discussion offers a critique of the materials presented in the *Star* articles and of the materials produced by Professor Friendly. The critique is based on what is known about the phenomenon of racial profiling as revealed in the literature review in Part I and focuses on the limitations of the method, analyses and findings presented by the *Star* and Professor Friendly.

**The Data Analyzed by the *Star***

There are severe limitations to the data provided to the *Star* and to the analyses that were conducted, including the absence of information on key variables that have been found to be associated with the decision making and exercise of discretion by police officers in encounter situations. Notably absent in the data set is information on the *context* within which the encounters occurred and the decision made to arrest for simple drug possession and to take a suspect from a traffic stop into custody. For example, there is no information on accomplices to the person who was stopped/searched by the police. Such accomplices, regardless of skin colour, may have been a factor in police decision making. Further, there are no data on the vehicles that were stopped, which precludes a determination of whether it was the *vehicle*, as opposed to the driver, that raised the suspicion of the officer. A vehicle may match the description of a stolen car or be suspected of having been used in the commission of a crime.

The *Star* data provide only a partial view of the decision making of police officers in Toronto. It does not “prove” that the police department engages in racial profiling in carrying out its mandate. Nor do the data provide the basis for the assertion that groups of officers, or individual officers, are racially biased in their decision making.

**GENERAL LIMITATIONS OF THE CIPS DATA**

- There is no method in place to ensure the accuracy of the data collection process. There is not currently spot-checking or cross-checking of the data

- The CIPS data were not gathered for purposes of assessing racial profiling

See the literature review in Part I for examples of the types of data that are being gathered by police departments in the U.S. in an attempt to record the decision making of police officers in stops and searches and to determine whether racial profiling is occurring.

## **THE *STAR* ANALYSES: GENERAL OBSERVATIONS**

### **A Limited Data Set**

The *Star* analyzed only a very small portion of the entire CIPS data set – approximately 4,5000 of the 800,000 incidents. The data analyzed by the *Star* do not constitute a random sample. Also, for the years 1996-98, completion of the CIPS forms was voluntary. Further, the recorded incidents in the data set received from the TPS reflect only a portion of the total number of police-citizen encounters. It is estimated that over the five year period 1996-2001, there were approximately 3 million vehicle stops; only a fraction of these result in a formal, written record. This is a primary reason why it is important to gather field observational data as part of any study of police decision making.

There are no data on the number, types, and attributes of police-citizen encounters that did result in written documentation during the time period 199-2001. This makes it impossible to determine whether the subset of traffic stops/arrests and arrests for simple drug possession are representative of the total number of encounters or not. There is no information on the number of warnings and informal contacts with the public

Reporting simple aggregate rates in stops and searches as compared to the proportion of a particular group in the population is not a valid measure of racial profiling. See the literature review.

### **The Absence of a Theoretical Framework**

The *Star* analyses are guided not by a theoretical framework. This would provide explanations for the disparity in aggregate rates of stops and searches, but by “folk wisdom” that the Canadian criminal justice system is systemically racist and, therefore, any disparities are due to racial profiling.

### **Criminologists and the Issue of Racial Profiling**

The *Star* states that “criminologists” believe that racial profiling exists in Canadian policing. However, only three criminologists are mentioned by name: Scot Wortley, Julian Tanner, and Gail Kellough. The literature review in Part I indicates that “criminologists” would agree that racial profiling is a much more complex issue than the *Star* analyses and Professors Wortley and Tanner would have us believe and it can be assumed that among the criminologists who have conducted the research studies reported in Part I, there would be general agreement that the *Star* analyses do not meet the standards for scientific inquiry into this issue.

### **Discrimination in the Canadian Criminal Justice System: “Folk Wisdom” vs. Empirical Evidence**

There are no theoretically and methodologically sound research studies that have found that systemic racism is a predominant feature of the Canadian criminal justice system nor is there any body of empirical evidence that the Canadian criminal justice system systematically discriminates against certain persons or groups of persons in the application of the law. The contention by the *Star* that the TPS engage in racial profiling is an extension of the argument that the Canadian criminal justice system is systemically racist and that racial profiling is an extension of the discriminatory activities of police officers, judges, parole boards, and other criminal justice agencies.

This absence of empirical evidence is most pronounced in discussions of systemic racism in the justice system. There has been the tendency on the part of some observers to equate evidence of contextual discrimination with systemic racism. For example, the fact that two officers in the Saskatoon Police Department were convicted in the death of an Aboriginal man, whom they left outside of town and who froze to death, does not prove that all police officers in the SPD are racist. Similarly, should empirical evidence be produced indicating that some officers in the TPS practice racial profiling, these data cannot be used to ascribe the practice of racial profiling to the entire department. The *Star* analysis does not provide any valid empirical evidence of either contextual or systemic racial profiling on the part of the TPS.



### **Confusing Association/Correlation with Causality**

A major flaw in the *Star* analysis is the confusion of association/correlation with causation. This is a very important distinction. The *Star* reported (October 20, 2002) that “Almost 34 per cent of all drivers charged with out-of-sight violations were black in the group where race was listed. Yet, according to the latest census figures, Toronto’s black community represents just 8.1 percent of the city’s population.” The use of raw percentages is not sufficient to establish racial profiling.

The *Star* data do not allow a determination of *causation*. That there is an association between certain variables, including ethnicity, and the decision to take a person into custody and hold that person overnight in a jail cell, does not establish causation, i.e. that the decision to take this course of action was due to racial profiling.

### **The Failure to Statistically Determine “Explained Variance.”**

Since the *Star* analysis was based upon establishing a simple association between variables, it was unable to answer a very important question: What is the total amount of variance in police decision making that is explained by all of the variables, including race? Even the most sophisticated studies of police decision making have been unable to explain more than 30 percent of the variance in the actions taken by officers. This is because of the myriad of factors that affect actions that police officers taken in encounter situations. It is very difficult to quantify the much of the cognitive processes that occur in police officer decision making and the influence of specific persons, places, and situations that inform their decision to stop a vehicle or to search a person. This is based on experience in dealing with persons, situations, and in determining whether a situation requires police intervention. Other factors that may influence the officer’s decision making are the level of police resources, whether the encounter occurs in a “hot spot”, whether there has been community and political pressure on the police to pursue a zero tolerance policy of enforcement, particularly in relation to drug-related issues.

### **The Absence of Benchmarks and Comparison Data**

Research scholars have identified the importance of benchmarks in any attempt to determine whether police officers are engaged in racial profiling. Studies of racial

profiling in Canada are notable for their failure to include, or mention, this important factor. So too does the *Star* fail to include, or mention, benchmarks and comparison groups.

### **The Rationale for Selecting Motor Vehicle Stops and Simple Drug Possession**

It is stated that these are two offences where the police exercise a considerable amount of discretion. However, police activity with respect to both of these encounter situations may be the result of “target-hardening” in certain areas which, in turn, may be the result of public expectations and pressures on the police. For example, an emphasis on traffic or on drug enforcement may have resulted in more police resources being applied to certain neighbourhoods in certain patrol divisions. In the absence of field observations and the collection of comparison data involving police encounters for other types of offences, it is not possible to determine whether these categories represent high or low-discretion activities, nor the organizational and officer-related variables that may contribute to the patterns of stops and searches.

### **The Limits of Statistical Data in Explaining Police Decision Making**

To fully understand the exercise of discretion and the factors that influence the decision making of police officers in encounters with citizens, it is necessary to triangulate data, that is, to have multiple data sources including written records, interviews, and field observations. This is particularly important in studies of police decision making in encounter situations, in which a wide variety of variables may determine the ultimate course of action taken by the police officer.

### **The Absence of Information on the Contexts within Which Police-Citizen Encounters Occur and Police Decisions are Made**

A review of the scholarly literature indicates that police officers make decisions and exercise discretion within a variety of contexts and, further, that the context in which officers police and make decisions will have a significant impact on the decisions they make.

The *Star* data do not contain detailed information on the patrol divisions. It can be expected that there is considerable variability among the patrol divisions in terms of their crime rates, the nature, type, and volume of requests for service, police-community relations, and the demands that are made on police officers. In the absence of these types of data, it is not possible to determine whether the enforcement style of the officers in a patrol division are primarily reactive to high risk situations and contexts, or are proactive and discriminatory.

### **The Police and Racial Profiling: Establishing the Threshold**

The criteria for establishing, conclusively, that racial profiling composes an integral part of the activities and decision making of a police department and its officers are multi-faceted and have, thus far, eluded even the most sophisticated methods and analyses.

It is very difficult to conclusively establish that an individual officer, or a group of officers are engaged in racial profiling. It is impossible to determine that an entire police force engages in racial profiling as an operational policy, even unstated. In fact, few studies have relied solely upon this information, given that it cannot be verified and its accuracy and completeness can be questioned. Given that a high percentage of traffic stops may not result in any formal record, this further limits the extent to which those incidents in which paper was generated can be generalized.

To conclusively establish that racial profiling exists would require much more than data on the perceptions that a sample of community residents have of the police and of their encounters with the police. That certain people who are surveyed perceive that they were singled out by the police for attention is only that: a perception. These perceptions must be validated by independent research using additional data sources in order to explain the outcomes (including perceptions) of police officer decision making. The average citizen is unaware of the wide variety of factors that can result in an officer deciding to make a traffic stop, or to approach a person suspected of drug possession.

### **The Absence of Historical and Contemporary Data on the Person of Interest**

Although the *Star* data do contain information on some of the attributes of the arrested persons, a considerable amount of important information is missing. For example, for the sample of persons arrested for Simple Drug Possession, there is no information on 1) any drug-related criminal history, including convictions for more serious offences; 2) what offence(s) led to the person being on bail/probation/community service order/parole; and, 3) the nature and extent of previous sentences and time in custody. There is no information on prior contacts with the police that did not result in a written record nor any information on the number of informal warnings that may have been given to the person

Significantly, there is no information on the demeanor of the person arrested at the traffic stop and taken into custody. Despite the fact that demeanor is a key element in police decision making and those persons who are not forthcoming in their responses to legitimate police questioning may be taken into custody so as to facilitate questions being answered and investigations being conducted. There is no information as to whether the person provided a false information to the office, used an alias, or had a history of doing same. These are all factors that might result in a person of interest being taken into custody and kept in custody under valid information could be obtained.

The *Star* data have been analyzed as if the traffic stop and the encounter for simple drug possession occurred in contexts that were equal except for the variable of ethnicity. This is a false premise. The *Star* data do not contain contextual information. Perhaps the vehicle being stopped had been stopped on previous occasions, was acting in a suspicious manner, or was on a list of “suspect” vehicles and it matched the description of a wanted vehicle. Perhaps the person stopped and searched for drugs was a known dealer, or had been arrested for drugs in the past, or was in an area known for drug dealing.

### **The Role of the Community in Decisions Made by the Police**

The data provided to the *Star* do not allow a determination of the role of the community in the decisions taken by the police. Police departments across Canada have adopted community policing as the operant model of service delivery. Within this model, the police form active working partnerships with the community in an attempt to identify and formulate collaborative responses and solutions to problems of crime and social disorder in the community. Canadian police services have also noted the effectiveness of zero-tolerance policing policies in the City of New York that played a major role in a decrease in that city's crime rate. In New York City, zero tolerance extends to minor offences such as jay walking. It is not possible to determine from the *Star* data whether the enforcement actions of the police, in relation to the two selected offence categories, was due in part to community expectations and as part of an overall problem-solving effort. Such collaborative police-community initiatives are common in areas afflicted by violence and drug trade activity.

### **The Risk Presented by the Citizen/Situation**

The research literature indicates that the level of risk presented by the person and the situation will affect the decisions made by patrol officers. The *Star* analyses do not include any data on the level of risk or its influence on actions taken by patrol officers.

In the absence of contextual information and more detailed information on the criminal record and history of contact with the police by the suspect, it is not possible to determine what the level of risk represented by the suspect. This would include data on the types of prior offences the suspect had been convicted of, his/her associates, previous contacts with the police (formal and informal) whether any prior, informal, warnings had been given by the police; the conditions of any bail supervision order or probation order; the extent to which the person was "known" to the police, "known" to be involved in the drug trade, "known" to be associated with organized drug trafficking, and/or "known" to be involved in car thefts and stolen property. Nor is their information on previous warnings issued, time served in custody, or other important attributes related to criminal

background. The CIPS data are extremely limited in the amount and type of information related to offence history and prior contact with the criminal justice system.

### **Multiple Decisions Made by Patrol Officers**

There are a number of different decisions being made by the officers and it is quite likely that each of the decisions is affected by a different variable set, as not only is there wide variation in the contexts within which encounters occur, the specific objective of the decision, i.e. to stop a car, to take a suspect to the police station, to hold the suspect overnight, are interrelated, yet not concurrent.

This requires data that can be analyzed to examine each type of decision being made and to be able to control all potential intervening variables so as to determine whether ethnicity is a primary factor influencing the decisions of officers. It is not possible to do this with the data provided by the *Star*. This would include the following types of information:

1. *the decision to stop a vehicle*: importance of time of day, information provided to the patrol officers about “suspicious” vehicles as reported by community residents, officer knowledge of the area and of the patterns of criminal activity in the area at certain times of the day; the police resources available at that particular time for patrol duty; the call backlog; etc.
2. *the decision to take a suspect to the police station*: importance of the dynamics of the encounter situation, i.e. the demeanour and level of evasiveness of the suspect and his/her associate; information on past contacts with the person, i.e. whether known to provide aliases, misinformation; the degree of risk posed to the community by not taking the suspect to the police station; the specific conditions of a bail order or probation order that would require supervising corrections officials to be notified (thus requiring the person to be detained).
3. *the decision to hold a suspect over night in custody*: why this decision was made; was additional time required to establish the identity of the person, to contact a supervising probation officer or bail supervisor; to conduct an additional investigation that may connect the person to another crime.

### **The Absence of Field Observations of Police Decision Making**

In the absence of field observations, it is not possible to document the cognitive processes that officers go through that result in a vehicle being stopped or a person being approached and to consider how the specific context in which the police-citizen encounter occurred affected the decision making of the officer. For example, there is no information on neighbourhoods in the different patrol divisions, making it impossible to correlate police activity with the attributes of the policing environments, including a determination of the “available” population vs. the “residential” population. The *Star* data do not allow the statistical findings to be examined in the *context* in which the encounters occurred and yet it is the context that plays a determining role in the decision making of the police.

There is no information in the *Star* data on the decision making of officers *not* to stop a vehicle for a traffic infraction, nor on the decision *not* to approach a person suspected of drug possession. This makes it impossible to determine the factors that determine when an officer will stop or not stop, intervene or not intervene. Such data can only be gathered by field observations and through interviews with patrol officers. Neither is there information on the universe of stops. There are no comparison groups of motorists or persons who could have been stopped/searched but were not stopped/searched.

This highlights the significance of the studies conducted by the Home Office, UK, that included interviews with police officers as well as several hundred hours of field observations. The *Star* asserts, without supporting empirical evidence, that the primary determinant of the action taken by TPS officers in encounter situations is the ethnicity of the citizen and, more specifically, whether the citizen was black.

### **“Slippage” in the Data Set**

There is a considerable amount of “slippage” in the data set, from the universe of contacts, to contacts in which a written document was produced, to written documents that include ethnicity, to the sample of incidents selected by the *Star* for analysis. Without some idea of the total universe of contacts and in the absence of field observations that would provide information on the decisions by officers, i.e. to give a warning on a traffic

stop, to seize and destroy drugs. It cannot be determined if the decisions that were analyzed by the *Star* are representative, nor the process by which the decision was made. It is possible that the data set represents only the “worst case” scenario; this is an empirical question that cannot be answered by the *Star* data.

### **The Attributes of the Police Officers**

The literature review indicated that the attributes of the patrol officer may affect decisions in police-citizen encounters. However, the CIPS data analyzed by the *Star* contain no information on the identity and attributes (i.e. age, length of service, performance record, ethnicity, gender) of the police officers making the decision. This makes it difficult to examine the decisions of individual officers and to determine whether there are relatively small number of officers, in certain divisions at a certain point in time, that may be responsible for certain decisions. As previously noted, there is considerable variability in the styles of policing among police officers and these may be reflected in decision making in encounter situations. This makes it impossible to determine whether any officers in the TPS may have biases and prejudices that are reflected in the decisions they make in police-citizen encounters. In the absence of these data, the assertion is made that the *entire* police department engages in racial profiling in a systemic way. The *Star* data and analyses do not allow such a conclusion to be reached.

### **Police Decision Making and Persons under Community Supervision**

The *Star* analysis indicates that those persons who were on probation and on bail had a high likelihood of being arrested and detained. This is what would be expected of the police in carrying out their duties. Those persons on probation and on bail are actively involved in the criminal justice system. Those on probation have been sentenced to a period of time under community supervision under a probation order that contains a standard provision that they are to “obey the law and keep the peace.” Additional conditions of the probation certificate may include an area restriction, a restriction on associating with certain persons, a curfew and being subject to search by a peace officer on reasonable and probable grounds. The violation of any one of these conditions can result in the probationer being brought back to court and sentenced to custody.



Although these types of factors may have influenced the police officer in the encounter situation to take action, there are no data on the conditions of the probation orders for those persons who were on probation. Similarly, a person under bail supervision will have certain restrictions on their movement and behaviour. Should an officer determine, or suspect, that the person is in violation of their bail conditions, that person may be detained so that the bail supervisor can be notified.

### **Reactive vs. Proactive Police Decision Making**

There appears to be the assumption in the *Star* analysis that it is the behaviour of the police that determine the enforcement patterns; however, given that the majority of police activity is in response to calls for assistance, the dynamics could be just the opposite. In the absence of extensive field observations of patrol officer behaviour, enforcement practices, and the dynamics of encounter situations, it is not possible to make this assumption.

### **The Variable of Race**

In recording the race of the person of interest, the patrol officer can selected among the following categories: Black, Brown, White, and Other. This assessment is made by the officer in the encounter situation and is not subjected to verification. . Without validation by field observations, it is impossible to determine the accuracy of this assessment.

### **Suspects Taken Into Custody**

The *Star* analysis indicates that there are strong, significant relationships between a CPIC being run and the person being on bail and police action. This is not surprising as persons who are on bail supervision, probation, a Conditional Sentence Order, or parole are required to adhere to certain general and specific conditions.

Perhaps the person was taken into custody so that the officer could contact the bail supervisor or probation officer to see what further action should be taken. The police cannot suspend a bail order or a probation order; however, it is

standard practice for the police to detain such persons until the bail supervisor or probation officer can receive all of the information from the police and make a decision as to whether the person should be held in custody.

That the person was held in custody over night may have been a decision made by the bail supervisor, or a supervising probation or parole officer and not by the arresting police officer. In the absence of additional data, it is not possible to follow the “decision trial.” The police will generally seek direction from bail supervisors, probation officers, and parole officers as to the course of action to take. The warrant of suspension of bail, probation, a Conditional Sentence Order, and parole are issued by corrections personnel, not by the police. If a warrant is issued, then the police are required to detain the person until such time as the person can be transferred to a correctional facility.

There is no information on whether the officer who made the decision to hold the suspect in custody overnight had legitimate reasons for doing so. The *Star* data only tell us that a person was held over night and that this was associated with ethnicity. There is a high likelihood that there are a variety of other factors that are associated with the decision to hold a person in custody; in the absence of interviews with officers and field observations, it is not possible to determine the influence of other variables that may be more important than ethnicity.

**Question:** What amount of the variance in the decision to hold a suspect in custody overnight is explained by ethnicity?

**Question:** How much variance do all of the variables available in the *Star* data explain in terms of the decision to hold a suspect in custody overnight?

## **RESPONSE TO SPECIFIC STATEMENTS IN THE *STAR* ARTICLES**

**October 19<sup>th</sup>** headline: “Our Duty: Examine All Issues.”

**RESPONSE:** Had the *Star* examined “all issues” it would have found that the issue of racial profiling is very complex and to establish that this practice exists in a police service is a very challenging even to the most sophisticated researchers. And, the determination that racial profiling is systemic and pervasive among all members of a police service, has not been accomplished in any study conducted to date. Further, it is important to distinguish between the behaviour and decision making of individual officers as opposed

to an entire police organization. The *Star* asserts that the entire TPS engages in the practice of racial profiling.

The data presented by the *Star* to support the accusation that the TPS engages in racial profiling do not include information that would allow a determination of the effect of the *context* within which police-citizen encounters in Toronto occur has on the rates of contact and arrest.

**October 19<sup>th</sup>:** The *Star* states that the police have considerable “leeway” in how to deal with persons who are found in simple possession of an illegal drug, stating “it’s up to the officers to decide.”

**RESPONSE:** Not necessarily. If the person who is in simple possession does not have a valid i.d. or the officer suspects that the person is providing false information relating to their i.d., the Criminal Code requires that the officer detain the person until positive i.d. can be established. This may involve taking the person into custody until such time as positive, valid, i.d. can be established. The discretion of the officers is limited in such a circumstance. Similarly, as noted, if the person is under some form of community supervision, the officer is required to take certain courses of action. The statement of the *Star* is erroneous.

**October 19<sup>th</sup>:** The *Star* indicates that traffic data were examined – more specifically “out of sight” offences such as failing to update a driver’s licence or driving without insurance, stating “Police usually discover such violations 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.”

**RESPONSE:** The data received by the *Star* from the TPS do not indicate in what percentage of the vehicle stops the officer discovered violations *after* the stop was made. Further, there are no data to indicate that the primary reason for the stop was the ethnicity of the driver. The absence of any other charge does not establish that race was the sole reason the vehicle was stopped. There are many other factors that may have precipitated the stop that were not measured in the CIPS data nor addressed in the *Star* analyses. Due to the limitations of the CIPS data set, it cannot be empirically demonstrated why

vehicles were stopped. The *Star* does not have the data, nor does their analyses of the data, establish that the ethnicity of the driver is the primary predictor variable in police officer decisions to stop a vehicle.

**October 19<sup>th</sup>:** “Like any good database, the information it spits out is only as good as the information it was fed.”

**RESPONSE:** Right. And the information the program was “fed” was not sufficient to make the statements the *Star* made about racial profiling in the TPS. (Note: the use of the terms “spits out” is not common among statisticians).

**October 19<sup>th</sup>:** “The *Star* cleaned up the data where possible.”

**RESPONSE:** There is no indication of how the data were “cleaned up” and how this may have affected the findings. This is but one of the many examples why the analyses conducted by the *Star* cannot be considered to meet the standards for scientific inquiry. It also makes it difficult for a third-party to replicate the analyses done by the *Star*.

**October 20<sup>th</sup>:** “Now, for the first time, empirical evidence suggests police have indeed been targeting black drivers in Toronto.”

**RESPONSE:** The review of the literature in Part I documented the difficulties associated with attempting to use anecdotal evidence to establish racial profiling. One such difficulty is the tendency of respondents to relate what happened to others. Another limitation of using anecdotal evidence is the documented tendency of minority persons to equate any negative encounter with the police with racial bias.

The *Star* does not establish that racial profiling is systemic to police behavior and decision making in the TPS. Nor does it provide any evidence that all, some, or any individual officers in the TPS routinely engage racial profiling in carrying out their duties.

**October 20<sup>th</sup>:** “It’s assumed random checks would generate a pattern of charges that mimics the racial distribution of drivers in society as a whole. So the rate at which

minority drivers are charged is often used, in the U.S., as a bellweather for racial profiling.”

**RESPONSE:** This assumption that drivers are randomly distributed is erroneous. (note: only a portion of the 8.1% of the black population drives motor vehicles and, of these, a smaller portion could be identified as the “available” population). Drivers are not randomly distributed, but rather may cluster, i.e. Football fans driving a certain route to the stadium. Further, as noted, there is a distinction to be made between “available” populations and “resident” populations.

Further, as documented in Part I, serious concerns have been raised about the using the rates at which minority drivers are stopped as an indicator of racial profiling. The assertion that the “rate at which minority drivers are charged is often used as a bell weather for racial profiling” in the U.S. is also incorrect. A review of the published literature indicates that this is not a valid indicator of racial profiling.

**October 22<sup>nd</sup>:** “Six years worth of Toronto police traffic offence data, obtained and analyzed by the *Star*, seems to indicate that racial profiling does exist. The data show a disproportionate number of blacks were ticketed for offences that would usually come to light only after a traffic stop was made – a pattern consistent with racial profiling.”

**RESPONSE:** The review of the published literature in Part I indicated that it is very difficult to prove the existence of racial profiling, even with data that are much more sophisticated than those used by the *Star*. In fact, the indicator used by the *Star* has been largely discredited by academic researchers.

**October 21<sup>st</sup>:** ‘At first, the anecdotal evidence was too overwhelming to ignore...Now, the numbers back up the stories...’

**RESPONSE:** Scholars who study racial profiling have noted the limitations of anecdotal evidence in proving racial profiling. Individual experiences with the police that are negative may or may not indicate racial profiling and are most likely to be contextual, rather than systemic. There is no established threshold for determining what level or extent of anecdotal evidence would prove the existence of systemic racial profiling, or, for that matter, contextualized discrimination.

The statement that “the numbers back up the stories” is incorrect, as there was no ability on the part of the *Star* to correlate individual incidents related by persons to specific encounters with the police as reflected in the CIPS data.

**October 26<sup>th</sup>:** The *Star* indicates that Professor Wortley “has researched and published peer-reviewed academic papers on the issue.”

**RESPONSE:** A computer search of criminal justice citation indexes revealed that Professor Wortley has published *two* peer-reviewed articles, both in the *Canadian Journal of Criminology*. The citations for these articles are as follows:

- Wortley, S. 1996. “Justice for All? Race and Perceptions of Bias in the Ontario Criminal Justice System – A Toronto Survey.” 38 *Canadian Journal of Criminology*. 439-67.
- \_\_\_\_\_ . 1999. “A Northern Taboo: Research on Race, Crime, and Criminal Justice in Canada.” 41 *Canadian Journal of Criminology*. 261-74.

The article “Justice for All...” is based on a 1994 general population survey of black, Chinese, and white residents in Toronto. Among the findings of the survey – the primary purpose of which was to examine citizen *perceptions* of bias in the criminal justice system - were that blacks were more likely to perceive discrimination within the criminal justice system than either whites or Asians. These racial differences in perceptions persisted even after controlling for various demographic characteristics. At the outset of his discussion, Wortley (1996:442) notes that “...very little research has looked at racial discrimination within the Canadian criminal justice system.” Significantly, Wortley’s discussion does not draw upon the racial profiling literature from the U.S. nor does the author identify the limitations associated with using data based on the perceptions of a sample of survey respondents. For purposes of the present examination, a significant finding of Wortley’s study is that “controlling for police and court contact does not explain the strong direct effect of race on perceptions of criminal injustice.” (459). In discussing this finding, Wortley (1996:459) offers a number of reasons *other* than personal experiences with the police that may account for the perceptions of injustice among black respondents:

Blacks may experience racism in other areas of their lives and subsequently generalize these experiences to all social institutions. Second, blacks may learn about police and courtroom discrimination indirectly, through the experiences of family members and friends.

This suggests factors *other* than racially-biased policing may contribute to the perceptions of criminal justice held by black citizens, an explanation that is not offered in the *Star* articles.

Wortley's conclusions in this article are particularly significant for the present discussion. In concluding his discussion, Wortley (1996:460) acknowledges that "...the attitudes observed in this survey do not 'prove' that discrimination exists within the Canadian criminal justice system" and suggests that "At the very least, the criminal justice system must admit that it has a very serious public relations problem." Needless to say, there is a significant difference between an organization having a public relations problem and an organization that carries out its mandate in a systematically racist manner. Wortley is not able to conclude that the results obtained in the survey are a consequence of racial profiling by the police.

The other peer-reviewed article, "A Northern Taboo...", is a discussion of the issues surrounding the collection of race-crime statistics. Wortley (1996:270) concluding, "[T]here are difficult decisions to make with respect to the future of Canadian research on race, crime and criminal justice." There no data presented in this article relating to racial profiling by the police.

Police profiling research in Canada is in its infancy and there is not, at the present time, a body of published research that can be drawn upon. A search of published literature using the key terms "racial profiling" resulted in fewer than ten citations and the majority of these were not police-related. Significantly, many of the studies cited by the *Star* in the October 19<sup>th</sup> article "Studies on Racial Profiling Issue" were prepared for commissions of inquiry and were not peer-reviewed nor subject to the same standards of scholarly inquiry as academic research.

**October 26<sup>th</sup>:** “If young black males feel officers treat them unfairly, they may develop a disrespect for the law. And that disrespect can in itself contribute to crime or conflict with the police.”

**RESPONSE:** There is no empirical evidence in the published criminological literature to support a causal connection between the citizen perceptions of the police and criminal behaviour. By extension, this argument leads to the conclusion that it is the police who are responsible for criminality, another assertion that is best characterized as a political view rather than a conclusion based on empirical evidence.

**October 26<sup>th</sup>:** “[R]acial bias and prejudice within the Toronto police force existed long before Fantino became chief.”

**RESPONSE:** This statement is not based on any empirical evidence.

**October 26<sup>th</sup>:** “The same analysis of a massive police data base also reveals that a disproportionate number of blacks were charged with violent crimes. These include homicides, attempted murder, sex assaults, gun-related offences and assault. These are cases where officers, due to the seriousness of the charges, have little room to exercise even a subconscious bias.”

**RESPONSE:** This provides some insight into the contexts within which police officers encounter minority populations although there was no attempt in the analysis to link the specific context within which the encounter occurred with police decision making.

**NOTE:** As previously noted, there are no data on the many thousands of police stops and searches that did *not* result in a citation or arrest.

**November 26<sup>th</sup>:** “”Ontario Provincial Police Superintendent Jay Hope stated there “was a consensus that racial profiling does exist in policing.”

**RESPONSE:** In fact, there is no such consensus, either among scholars in Canada or the U.S. The review of the research literature on racial profiling has clearly established there is no consensus.



“There must be action taken to root out the troubling police practice.”

**RESPONSE:** No empirically valid data are presented to support the assertion that there is a “troubling police practice.”

“Firm measures are needed today to end discriminatory police practices.”

**RESPONSE:** The analysis of the CIPS data and the materials presented by the *Star* do not establish that there are “discriminatory police practices.”

**October 19<sup>th</sup>:** Chief Fantino’s statement: “...the data you are providing, (is) data that you have interpreted totally inappropriately and incorrectly because it doesn’t reflect the reality of what we’re dealing with.”

**RESPONSE:** This is an accurate statement, in view of the scholarly literature on racial profiling, and of the severe theoretical, methodological, and analytical shortcomings of the *Star* analysis.

“Chief Fantino statement: “We don’t look at, nor do we consider, the race or ethnicity, or any of that, as factors in how we dispose of cases, or individuals, or how we treat individuals.”

**RESPONSE:** There are no data presented by the *Star*, nor by Professor Friendly, that would disprove this statement.

**October 23<sup>rd</sup>:** The *Star* acknowledges that they did not *explain* why the arrest rate of blacks was three times what their numbers would seem to suggest, stating “Who knows why?”

**RESPONSE:** Since the *Star* concluded that racial profiling was the reason for the disparity in arrest rates, they, in fact, have sought to explain it – by accusing the TPS of racial profiling.

“What the *Star* reporters did was look at areas that are less cloudy and require less explanation. How did the police treat those who were arrested? How did police use their

discretion in booking the accused, jailing them or releasing them with a summons to appear at a station or in court?”

**RESPONSE:** In fact, the areas that the *Star* examined are *very* cloudy and require explanation. (see the literature review in Part I)

**NOTE:** The *Star* and Professor Friendly are arguing that their analysis of the data indicate that there is *systemic racism* directed toward blacks in Toronto. There is no empirical evidence to support this assertion. They did not consider the issue of contextual discrimination.

**November 28<sup>th</sup>:** Lincoln Alexander’s statements that racial profiling has long existed in policing and further that “This is not a new phenomenon, but it has been acknowledged”. It has been said that yes, it does exist” are not supported by any evidence presented at the summit, nor by the published research in Canada. Nor, in fact, by the preponderance of the research evidence from extensive studies of racial profiling that have been carried out in the U.S. Stating that “it has been said” is not empirical evidence.

Fantino’s comment: “Yeah, there are incidents – I’ve said that from the get-go – what I’ve always resisted is this label that seems to have been put on the whole of the organization and its people, that basically we are a racist organization” is a correct assessment. Fantino is acknowledging that there may be *contextual* discrimination. This has not been examined. He is rightfully challenging the accusation that racial profiling is systemic. There are not data to indicate that racial profiling is systemic in the Canadian criminal justice system, nor in the Toronto Police Service.

### **GENERAL CRITIQUE OF PROFESSOR FRIENDLY’S ANALYSIS AND CONCLUSIONS**

The review of the statistical analysis and findings of Professor Friendly is mindful of the following caveats offered by two U.S. racial profiling researchers:

“Statistics represent meaningless numbers unless they are put in a relevant context or used as a legitimate means of comparison.”

- Kruger (2002:5)

“One should not look for definitive answers in statistical analyses.”

- Thomas, 2001:6

A review of Professor Friendly’s curriculum vita reveals that his academic expertise is in the area of statistics. As such, Professor Friendly would not be familiar with the theoretical and methodological issues surrounding the racial profiling nor would he be familiar with the published literature in this area that has previously been reviewed. This severely limits Professor Friendly’s ability to assess whether the analyses and findings presented by the *Star* meet the theoretical and methodological criteria for determining whether police officers in the TPS engage in racial profiling. Rather, Professor Friendly’s contribution has been to validate the analyses conducted by the *Star*, without comment on whether the analyses provides an explanation for the disparities in rates of contact or whether the variables used are sufficient to support the accusation that racial profiling is a standard operating procedure in the TPS.

Although the statistical analyses performed by Professor Friendly may be valid, the question is whether the data he analyzed are sufficient to determine whether or not racial profiling exists in the Toronto Police Service.

Professor Friendly would not be familiar with the leading edge research on racial profiling, including the in-depth study conducted by the Home Office, U.K. As discussed in Part I, this study examined the factors that influenced police decision making in relation to stops and searches. Several data sources were used, including video tapes and observations of available pedestrian and vehicle populations in “hot spots” or zones within each of five sites where most stops and searches occur. A major finding of this study was that “resident” population measures are different from populations actually “available” to be stopped and searched. Specifically, available populations tend to include large proportions of people from minority, ethnic backgrounds that resident populations. Furthermore, when statistics on stops and searches were compared with available populations, they did not show any general pattern of bias against minorities,

though there were some exceptions. Stops and searches were generally targeted at areas with crime problems.

Professor Friendly's conclusions are contrary to the findings of every major study of racial profiling that has been conducted to date, including studies by the U.S. General Accounting Office, the Police Executive Research Forum, and Home Office (UK), and leading police scholars. And his conclusions are reached using the types of data that have been discredited as indicators of racial profiling by police. There is no mention of the serious limitations of the data being analyzed or of the major challenges that confront researchers in studying racial profiling.

### **CRITIQUE OF SPECIFIC COMMENTS MADE BY PROFESSOR FRIENDLY**

**December 11<sup>th</sup>:** A1; "No matter how he analyzed police data, race remains a key factor in how Toronto Police treat blacks."

**RESPONSE:** There are no data to allow this statement to be made. The data analyzed by the *Star*, and confirmed by Friendly, do not contain the information required to establish racial profiling as indicated by the extensive research literature on racial profiling.

**A1:** "No matter how many variables are taken into account, Friendly told the meeting, race always emerged as a factor in his analysis of charges of simple drug possession and offences under the Highway Traffic Act."

**RESPONSE:** There were only a very small number of variables analyzed; there were no benchmarks or comparison groups established; and no analysis of variance performed. Professor Friendly did not conduct the type of analyses that would be required to identify race as the primary reason for the disparities in the aggregate data.

Professor Friendly is a statistician with no knowledge of policing or of the extensive research literature on racial profiling that has set out the types of research protocols that are necessary in order to gather data that could be analyzed in any study of racial profiling. Further, the data made available to the *Star* are not sufficient, in themselves, for a study of racial profiling. Additional information from interviews and field observations would have to be gathered.

Professor Friendly has not shown that race is the *explanation* for the disparities; nor has he or the *Star* provided a definition of racial profiling, a theoretical framework within which the data are to be analyzed, and the explanations for the results that are achieved.

**A30:** “I looked at the data in many different way and the effect of race never went away.”

**RESPONSE:** What effect? What ways were the data “looked at” – what types of analyses were done and what are the limitations of the data and of the analyses?

**POINT:** If Professor Friendly has, in fact, provided empirical proof that the TPS engage in racial profiling, he is the first researcher in North America to accomplish this feat, using data that are much more limited than those used by other researchers and without the benefit of testable hypotheses or a theoretical framework that would identify the other potential sources of the disparities. And, he has done so without any knowledge of policing, police practice, the issues related to the definitional problems surrounding racial profiling, and the extensive discussions that exist surrounding the limitations of both the data used and the methods of analysis.

**A30:** “The claims that the *Star* made were supported by the data.”

**RESPONSE:** This statement simply cannot be made given the serious limitations of the data and the analysis performed on the data. For example, only a very limited number of variables, including previous conviction, state of employment, and home address, were considered. There were no control groups, no comparison groups, no identification of “available” as opposed to “resident” population groups. Further, these variables have not been identified in research studies conducted to date as the primary factors in the police decision to stop a motor vehicle or to search a person.

**A30:** Professor Friendly describes his analysis of the data as “rigorous”. This can be challenged on a number of fronts. His analysis was certainly not as rigorous as that of studies reviewed in Part I of this document and the results of any analysis are open to question due to the limitations of the *Star* data. Further, Professor Friendly’s analyses have not been subjected to peer review. It would be suggested that his work be reviewed

by scholars in the U.S. who are actively involved in racial profiling research and who have published in peer-reviewed journals.

**A30**” The effect of skin colour is persistent...and cannot be dismissed.”

**RESPONSE:** This statement requires empirically valid data that do not exist in the present case. More specifically, the Professor does not indicate what the “effect “ is, how the “effect” achieved might have been influenced had a myriad of other variables, such as the identification of “available” vs. “residential” populations, been taken into consideration. Significantly, there is no finding as to the contribution of race and other variables to the amount of explained variance in police decision making. .

**A30:** “He (Friendly) conducted his own analysis and found the newspaper’s approach, methods, and main findings to be sound.”

**RESPONSE:** Given the main points that emerge from an extensive review of the literature on racial profiling, it is inconceivable how Professor Friendly can reach this conclusion.

It is important to note that the *Star* articles implicate the *entire* TPS, not just a group or individual officers and, apparently, Professor Friendly is agreeing that the analysis proves this.

**A30:** “Civil libertarians and criminologists say this pattern points to racial profiling whether conscious or not.”

**RESPONSE:** An extensive review of the published literature on racial profiling has revealed that criminologists who have conducted scholarly research on this topic are in general agreement that 1) it is extremely difficult given the limitations of data and statistical analyses to establish that a police service or police officers are engaged in racial profiling and that the discrepancies in aggregate rates of stops and searches are due to ethnicity; 2) the research studies to date have not established that police departments, as organizations, or that individual police officers use race as the basis of their decision making, 3) there are a myriad of variables, other than race, that come into play in the decision making of the police that may result in a disproportionate number of minority

persons being arrested or ticketed by the police; and, 4) research studies conducted to date have lacked a theoretical framework that would provide explanations for the statistical results achieved.

To contend that police officers exercise “subconscious” racial profiling in the absence of valid data analyzed within the appropriate theoretical framework is irresponsible.

**A30:** “Criminologists who are familiar with the field of policing, who have conducted studies on racial profiling, and who have published in peer-reviewed scholarly journals would agree that the *Star* analysis “points to racial profiling...”

**RESPONSE:** Interestingly, the *Star* does not identify the criminologists who would support this view and, in fact, only three criminologists are mentioned in the *Star* articles. As noted in the literature review, there has been very little research on racial profiling conducted in Canada. So, it is not certain to whom the *Star* article is referring. Certainly the scholars whose research is reviewed in Part I of this document would take issue with this assertion by the *Star*.

**PART III.**  
**RE-ANALYSIS OF THE CIPS DATA PROVIDED TO THE STAR**

The re-analysis of the CIPS data provided to the *Star* was designed to 1) replicate the analyses conducted by the *Star* and by Professor Friendly; and, 2) carry out additional, selective analyses of the data. There are a number of factors that have complicated these tasks. It is not possible in many instances to determine the decisions that were made by the *Star* staff in conducting their analysis. Recall the statement in one of the early *Star* articles that, in some instances, the data were “cleaned up.” Important decisions, unknown to anyone other than the principles, were made about what data were to be used and the format in which the data would be analyzed. Another complicating factor is the sheer size of the data set and the time required to become familiar with what items of information are contained in the set and, as importantly, what types of data are not included.

Another important factor is that both the *Star* and Professor Friendly considered the data set as the population of interest, i.e. as including all possible cases of police-citizen encounters. However, the data set represents only a subset of those processed by the police. The total population of interest is unknown and could only be determined by conducting field observations

Re-analysis of the data is not required in order to successfully challenge the assertions made by the *Star* that the Toronto Police Service engages in racial profiling. However, the selected re-analysis of the data illustrates both the complexity of the issue and suggests that the analyses completed by the *Star* did not consider important variables. And, the selected analyses that were completed have produced findings that suggest that the race is not a significant factor in the decision making of Toronto police officers.

**THE DIFFICULTY OF REPLICATING THE ANALYSES CONDUCTED BY THE STAR AND BY PROFESSOR FRIENDLY**

For a variety of reasons, it is not possible to replicate the analysis conducted by the *Star* and by Professor Friendly. There are numerous discrepancies in the data. For example, it was reported that 10,729 arrest cases for drug possession out of a total of 483,614 were analyzed. The number of arrests made for the offense category ‘Drug



Possession' is 27,313. The rationale for selecting this particular category of offense could apply to many of the other offense categories. Furthermore, the analysis is confined to those cases that are shown as 'Released' after arrest.

The criteria that appear to have been used by the *Star* to reduce the number of cases analyzed from several hundred thousand to under 10,000 appear arbitrary and suggest that certain data were selected and analyzed that might be more likely to support the argument that the police are engaged in racial profiling. What is apparent is that the decisions that were made regarding the data were not guided by a theoretical framework or scientific hypotheses that would provide *explanations* for the results that were achieved.

### **SELECTED ANALYSES OF THE *STAR* DATA**

The analyses in this section was designed to address two of the main findings presented in the *Star* articles: 1) the drug possession / Form 9 / preferential treatment for whites, and, 2) the disproportionate number of blacks charged.

With the previously-noted caveats about the limitations of the *Star* data noted, the results of the analysis indicate that whether whites are released more often than blacks under Form 9 after being charged depends upon the particular offence in question. Further, although the aggregate figures indicate that blacks are disproportionately charged than whites, there are a variety of reasons why this may be the case, the majority of which are not related to the decision making of the police. The analysis also indicates that the 10,000+ based figure for simple drug possession used by the *Star* and Professor Friendly for their analyses is likely not credible. Finally, comment is offered as to why any differences that occur between blacks and whites are not necessarily statistically significant.

#### **Patrol Area x Skin Colour**

A subset [N = 90470] of those with severity score of 0 [i.e. having no previous record] was selected. Thereafter, a cross-tabulation with the variable Patrol Area was run with Skin Colour as the other variable. The results indicate that there is considerable variation in the arrest numbers across different patrol

areas. The mean arrest number per patrol area was seen to be 379.60 while for Black it was 75.86 [standard deviation = 88.81] and for Brown, 78.97 [standard deviation = 92.47]; for White it was 224.76 [standard deviation = 141.82]. Clearly, the proportion of Blacks with no prior police record was smaller than that of the Browns or Whites. The wide variation in arrest numbers clearly establish that there is no systematic bias against any particular category of violators. In fact, in at least in half of the patrol areas the number of arrests of Brown skin color was higher than the number of arrests for persons of black skin colour

### **Age x Skin Colour x Arrest**

The age of persons in the data set was categorized as follows:

<15            16-19            20-25            25-50            and >50

Although, the percent of Whites being arrested was high in all the age categories, it is significant that the Black percentage arrests were the highest for age category <15 [accounting for 29.9%] and decreased to 11.5% for >50 category which was comparable to Browns [10.8%]. Research on crime patterns reveals that offending is highest among younger age groups. In these data, there is a statistically significant relationship between the variables of Age and Skin Colour.

### **Selected Attributes of the Person x Arrest/Non-Arrest**

The field arrest type was dichotomized into two categories- arrest and non-arrest. A logistic regression was run with this dichotomous variable as the dependent variable and the variables of offense type, age category, sex, severity scale, skin-color, citizenship status and patrol area as the independent variables.

The results of this analysis indicate that the independent variables, in total, explained only 6.9% of the variance of the dependent variable of arrest/non-arrest. However, these variables were found to be statistically significant, correctly predicting 61.3% of the outcomes (arrest/non-arrest) of the cases. The most significant findings of this analysis was that skin color was *not* found to be statistically related to the dependent

variable of arrest/non-arrest, while all of the other independent variables related to attributes of the person were statistically related to outcome.

Analysis of the data revealed that the odds of arrest increase by a factor of

1.781 for citizenship category

1.425 for sex

1.068 for severity scale

1.029 for offense type

1.000 for patrol area

0.836 for age category

*Skin colour was non-significant and did not load on the regression equation.*

## **RE-ANALYSIS OF THE FORM 9 RELEASE DATA**

In support of the argument that the *Star* engaged in a selective analysis of the data, analyses were completed on Form 9 releases for blacks and whites for a wide range of offences. These results are presented below.

### **Releases on Form 9 x Simple Drug Possession x Race**

The *Star* reported the main finding that “Blacks charged with one count of simple drug possession were released on form 9 less often than whites facing the same single charge, and held for show cause twice as often as whites. This finding was based on an analysis “of the over 10,000 people in the database charged solely with one count of simple possession.” (*Synopsis of Toronto Star Analysis of the Toronto CIPS Data*).

Re-analysis of the CIPS data indicates that charges from the Narcotics Control Act (NCA), Controlled Drugs and Substances Act (CDSA) and Food and Drug Act (FDA) that were considered “simple possession of a drug” exceeded 27,000 charges (27313), far in excess of the “over 10,000” figure used by the *Star* and Professor Friendly.

Any attempt to reproduce, analyze, interpret and consider other variables (i.e. criminal history, a severity score) that may affect the findings of the *Star* analysis would require the *Star* and Professor Friendly to provide information as to the **subset** of the simple possessions of drugs data that was used for the analysis, and the criterion upon which such a selective decision was made. Despite the exclusion of data related to possessions of drugs that are typically deemed as offences of a more serious nature (i.e.

possession for the purposes of trafficking, cultivation, manufacture, refining, importing, exporting and prescription fraud), the total number of incidents involving “simple possession” exceeded 27,000 charges.

Even with the exclusion of charges related to the “simple possession” of marijuana, the total number of “simple possessions” of all remaining drugs is over 17,000 (17,108). It should be noted that a very high proportion of those charged with marijuana possession offences (in various possible combinations and permutations of N.C.A. and C.D.S.A, and amounts “under” and “over”) were persons whose skin colour was identified as being white.

It is likely that some subset (for whom the *Star* claims as “the over 10,000 people in the database charged solely with one count of simple possession”) of “simple possession” charges were selected. Thus, there was likely some arbitrary inclusion or exclusion of certain drug classes or there was failure to consider the changes in legislation from the federal legislation during the time period covered by the data from the Narcotic Control Act to the Controlled Drug Substances Act. The basis upon which the data were selected for analysis is unknown.

Since the *Star* suggests that whites receive a higher proportion of favorable treatment (expressed as releases under Form 9s), an alternative analysis would be the consideration of the treatment of blacks and whites facing other common charges and determine the percentage that were in receipt of Form 9s:

For Assault (Criminal Code of Canada (CCC) Section 266):

Skin colour	Arrested	Arrested, detained & released	Received Form9s	% Arrested & Released Form9
(no entry)	4036	162	67	41.4%
<b>Black</b>	13832	<b>6895</b>	<b>1198</b>	<b>17.4%</b>
Brown	9320	4859	824	17.0%
Other	2987	1503	254	16.9%
Unknown	67	34	1	2.9%
<b>White</b>	32669	<b>16042</b>	<b>3448</b>	<b>21.5%</b>
OVERALL	62911	29495	5792	19.6%

Considering assault (Section 266 of the CCC) in the above table, it would appear at *prima facie* that the percentage of those arrested and released under the terms of Form 9 were higher for whites (21.5%) than for blacks (17.4%). However, this difference could merely be due to random variability. This informal method of visual inspection and comparison can be very misleading.

To explain this phenomenon and why a more formal method of comparison is required, an example from everyday experience is presented. For instance, although the fair toss of a balanced coin is expected to be 50% for heads and 50% for tails, this expectation is not always observed. When ten (10) tosses of such a coin are performed, 5 heads (thus 5 tails) is the result that is intuitively expected; but this is not always observed. In fact, 5 heads for 10 tosses of a coin **cannot** even be expected the majority of the time (a result which perplexes intuitive sense); in fact, this intuitive result of 5 heads in 10 tosses of a coin occurs less than 25% of the time. Why does intuitive sense fail?

If one were to toss a coin 10 times, there would be two possible outcomes for each toss: either heads or tails. The total number of outcomes is  $2^{10} = 1024$ . Of these outcomes, only one has all 10 heads, so the probability of 10 heads is  $1/1024$ . There are 10 ways to get 1 head (it could come on any of the 10 tosses), so the probability of 1 head is  $10/1024$ . There are  $10 \cdot 9/2$  ways to get 2 heads (the number of combinations of 2 out of the 10 events), and so forth. The resulting probabilities are:

0 heads:	$1/1024 =$	0.0009765625
1 head:	$10/1024 =$	0.009765625
2 heads:	$45/1024 =$	0.0439453125
3 heads:	$20/1024 =$	0.1171875
4 heads:	$210/1024 =$	0.205078125
5 heads:	$252/1024 =$	0.24609375
6 heads:	$210/1024 =$	0.205078125
7 heads:	$120/1024 =$	0.1171875
8 heads:	$45/1024 =$	0.0439453125
9 heads:	$10/1024 =$	0.009765625
10 heads:	$1/1024 =$	0.0009765625
	-----	
		1.0000000000

Therefore, although 5 heads out of 10 coin tosses is a result that is not infrequently observed (24.6%), 6 heads occurs 20.5% and 4 heads also occurs

20.5%. In fact, where directionality is not pre-determined, it is actually far more common (41% probability) to have a 60 / 40 result (with either heads or tails as the majority) than an exactly equal or nearly equal result of 50 / 50 (24.6% probability). Thus, intuitive sense fails, and a more formal procedure is required for comparison.

The chi-square ( $\chi^2$ ) test for “goodness of fit” is an effective way of comparing an observed frequency distribution (such as the number of whites vs. blacks who are actually released under the terms of Form 9) to an expected frequency distribution (such as the number of whites vs. blacks who we expect to be released under the terms of Form 9). In a process that is fair and unbiased, the number actually released under Form 9 should be directly related to the actual numbers whom were arrested and detained, in balanced proportions for each racial category. (In reality, and has been noted previously, this is a gross simplification, since there are many other factors, such as the circumstances of the crime, past criminal history, the behavior of the suspect, public risk, and so on, which are clearly important. The consideration of these complicating factors further weakens the methodology of the *Star*’s analysis).

**Set  $\alpha$ :**  $\alpha$  is the chance of committing a Type I error in statistics (rejecting the null hypothesis, also known as finding a difference when there is none), which we want to make as small as possible. The value of  $\alpha$  is typically set at 0.05.

**Population characterization:** It is assumed that the scores were taken from a multinomial population; the population falls into categories, by race.

**Hypothesis statement:**

In the null hypothesis, the proportion of suspects released under the terms of Form 9 are equal in proportion to those arrested, detained and released, for all racial categories.

In the research hypothesis of the *Star*, the proportion of suspects released under the terms of Form 9 are *unequal* in proportion to those arrested, detained and released, for all racial categories.

**If-Then Link:** If the null hypothesis is true, then a chi-square ( $\chi^2$ ) statistic calculated from the sample will have a sampling distribution of  $\chi^2_{\text{degrees of freedom}, \alpha} = \chi^2_{n-1, \alpha}$ .

$$\chi^2 = \sum ( \text{observed frequency} - \text{expected frequency} )^2 / \text{expected frequency} \sim \chi^2_{n-1, 0.05}.$$

Since  $n \gg 100$ ,  $\chi^2_{\text{crit}}$  (the critical value of  $\chi^2$  where the boundary exists that helps us make the decision whether to support the null hypothesis or the research hypothesis) = 124.34 (from tables of statistical mathematics).

Reviewing the data for Assault (Criminal Code of Canada (CCC) Section 266):

Skin colour	Arrested, detained & released	Expected number of Form 9 releases	Observed number of Form 9 releases	$(O - E)^2 / E$
(no entry)	162	31.81	67	38.9212175
<b>Black</b>	<b>6895</b>	<b>1353.99</b>	<b>1198</b>	<b>17.97054088</b>
Brown	4859	954.17	824	17.75880454
Other	1503	295.15	254	5.736514867
Unknown	34	6.68	1	4.826432613
<b>White</b>	<b>16042</b>	<b>3150.203</b>	<b>3448</b>	<b>28.15135802</b>
OVERALL	29495			113.3648684

**Decision Rule:** If  $\chi^2_{\text{obs}} < \chi^2_{\text{crit}}$ , then we accept the null hypothesis (that there is no difference in the proportion between categories), otherwise we accept the research hypothesis.

$\chi^2$  degrees of freedom,  $\alpha = \chi^2_{n-1, \alpha} = 113.4 < 124.34$ . Thus, we accept the null hypothesis, and conclude that the proportion of suspects released under the terms of Form 9 are equal in proportion to those arrested, detained and released, for all racial categories.

### FORM 9 RELEASES X SELECTED CRIMINAL OFFENCES X SKIN COLOUR

It is useful to briefly consider other common criminal charges which are common and in which it may be perceived that racial differences exist in the treatment of suspects by the police.

For Assault with Intent to Resist Arrest (CCC 270(b)):

Skin colour	Arrested	Arrested, detained & released	Received Form9	% Arrested & Released Form9
(no entry)	185	4	2	50.0%
<b>Black</b>	<b>1695</b>	<b>442</b>	<b>64</b>	<b>14.5%</b>
Brown	314	103	19	18.4%
Other	161	52	6	11.5%
Unknown	8	1		0.0%

<b>White</b>	2194	<b>592</b>	<b>90</b>	<b>15.2%</b>
OVERALL	4557	1194	90	7.5%

With respect to the offence of Assault with Intent to Resist Arrest (CCC Section 270(b)), the figures reveal a difference in the percentage of Form 9s for blacks (14.5%) and whites (15.2%) that is even smaller (and not statistically significant) than that of Assault (CCC Section 266) that was previously calculated.

For Threatening Death (CCC Section 264.1(1)(a)):

Skin colour	Arrested	Arrested, detained & released	Received Form9	% Arrested & Released Form9
(no entry)	921	23	0	0.0%
<b>Black</b>	4685	<b>1382</b>	<b>33</b>	<b>2.4%</b>
Brown	3738	1257	20	1.6%
Other	866	234	3	1.3%
Unknown	25	5	0	0.0%
<b>White</b>	11402	<b>3386</b>	<b>85</b>	<b>2.5%</b>
OVERALL	21637	6287	141	2.2%

For Threatening Death (CCC Section 264.1(1)(a)), the figures for releases under Form 9 (2.4% and 2.5% for blacks and whites, respectively) reveal a small difference that is not statistically significant.

For Murder (CCC Section 235(1)):

Skin colour	Arrested	Arrested, detained & released	Received Form9	% Arrested & Released Form9
(no entry)	4	3	0	0.0%
<b>Black</b>	63	<b>2</b>	<b>0</b>	<b>0.0%</b>
Brown	19	2	0	0.0%
Other	6	1	0	0.0%
Unknown	0	0	0	0.0%
<b>White</b>	76	<b>11</b>	<b>0</b>	<b>0.0%</b>
OVERALL	168	19	0	0.0%



For perhaps one of the most serious crimes, Murder (CCC Section 235(1)), the figures for releases under Form 9 (0% both blacks and whites) is exactly the same - there were no releases under Form 9.

For Theft Under (CCC Section 334):

Skin colour	Arrested	Arrested, detained & released	Received Form9s	% Arrested & Released Form9
(no entry)	2641	496	460	92.7%
<b>Black</b>	10058	<b>6514</b>	<b>4729</b>	<b>72.6%</b>
Brown	8558	6805	5302	77.9%
Other	3418	2138	1484	69.4%
Unknown	77	42	32	76.2%
<b>White</b>	33004	<b>20769</b>	<b>14728</b>	<b>70.9%</b>
OVERALL	57756	36764	26735	72.7%

For the very common charge of Theft Under (CCC Section 334), the figures for releases under Form 9 are actually reversed. Although formal tests would need to be applied to test the numerical differences for statistical significance, a larger percentage of blacks (72.9%) were released under the terms of Form 9 than whites (70.9%). Clearly, there is no racial bias against blacks and in favor of whites for favorable release for this type of crime.

For Possession of Property Obtained by Crime, Under, (CCC Section 354(1)):

Skin colour	Arrested	Arrested, detained & released	Received Form9s	% Arrested & Released Form9
(no entry)	1260	93	46	49.5%
<b>Black</b>	6655	<b>2652</b>	<b>958</b>	<b>36.1%</b>
Brown	3866	2125	906	42.6%
Other	2367	1379	613	44.5%
Unknown	47	11	4	36.4%
<b>White</b>	19017	<b>7538</b>	<b>2590</b>	<b>34.4%</b>
OVERALL	33212	13798	5117	37.1%

For another common charge of Possession of Property Obtained by Crime, Under, (CCC Section 354(1)), the figures for releases under Form 9 are again

reversed. A larger percentage of blacks (36.1%) were released under the terms of Form 9 than whites (34.4%). Even without a formal test of statistical significance, there is no evidence of racial bias against blacks and in favor of whites for favorable release for this type of crime.

For Operation of a Motor Vehicle While over 80 mgs Alcohol (CCC Section 253(b)):

Skin colour	Arrested	Arrested, detained & released	Received Form9	% Arrested & Released Form9
(no entry)	620	73	10	13.7%
<b>Black</b>	569	<b>529</b>	<b>40</b>	<b>7.6%</b>
Brown	1299	1214	57	4.7%
Other	292	273	15	5.5%
Unknown	14	14		0.0%
<b>White</b>	5595	<b>5322</b>	<b>324</b>	<b>6.1%</b>
OVERALL	8389	7425	436	5.9%

There are a variety of ways in which the offence of Operation of a Motor Vehicle While over 80 mgs Alcohol may come to the attention of parole officers, including a complaint via cell phone from another motorist or the driving pattern of the vehicle. For this offence, a higher percentage of blacks (7.6%) were released under the terms of Form 9 than whites (6.1%). Again, there is no evidence for a racial bias against blacks and in favor of whites for favorable release for this type of crime.

For Communication for the Purpose of Purposes of Prostitution (CCC Section 213(1)(c)):

Skin colour	Arrested	Arrested, detained & released	Received Form9	% Arrested & Released Form9
(no entry)	701	61	57	93.4%
<b>Black</b>	957	<b>707</b>	<b>649</b>	<b>91.8%</b>
Brown	917	824	795	96.5%
Other	304	220	195	88.6%
Unknown	8	3	2	66.7%
<b>White</b>	5500	<b>3920</b>	<b>3555</b>	<b>90.7%</b>
OVERALL	8387	5735	5196	90.6%

For an offence that is often perceived to be racially-associated, Communication for the Purpose of Prostitution (CCC Section 213(1)(c)), the figures for releases under Form 9 are again reversed. The releases for all racial categories under Form 9 are consistently high for this infraction. A slightly larger percentage of blacks (91.8%) were released under the terms of Form 9 than whites (90.7%). There does not appear to be any evidence for a racial bias against blacks and in favor of whites for favorable release for this type of crime.

### **Population Representation x Race x Offence**

The data selected by the *Star* “for violations that surface after a traffic stop has been made” (the so-called “out-of-sight” offences) appear to have been done on a selective basis and could not be replicated.

However, the *Star* makes frequent claims that blacks are disproportionately charged with such offences compared to whites, in relation to the population of blacks and whites in the residential population. The stated assumption of the *Star* is that police officers are only discovering the “out of sight” offences after making racially-biased decisions as to which vehicles to stop. In addition, the *Star* has analyzed simple drug possession as an example of an offence where there are no immediately apparent victims or complainants. The insinuation is that police officers are exercising discretion in a racially-biased manner.

Following are data on other violations of the law where there generally are victims or complainants. In such cases, police are normally required to charge suspects. The tables illustrate that, when all possible offences are examined, Blacks tend to be more likely to at risk for committing crimes of a more serious nature (Indictable offences):

<b>CATEGORY</b>	<b>Skin Colour</b>	<b>Arrests</b>	<b>%</b>
Not Criminal Code	White	72,754	14.3%
Summary	White	35,318	7.0%
Dual	White	301,564	59.4%
Indictable	White	97,789	19.3%

507,425

CATEGORY	Skin Colour	Arrests	%
Not Criminal Code	Black	22,044	13.5%
Summary	Black	7,570	4.6%
Dual	Black	93,816	57.4%
Indictable	Black	40,027	24.5%

163,457

For Assault Causing Bodily Harm (CCC Section 267(b)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	407	5.7%
<b>Black</b>	1522	<b>21.5%</b>
Brown	1024	14.5%
Other	435	6.1%
Unknown	9	0.1%
<b>White</b>	3682	<b>52.0%</b>
TOTAL	7079	100.0%

Assault With Weapon (CCC Section 267(a)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	778	4.0%
<b>Black</b>	5780	<b>29.6%</b>
Brown	3618	18.5%
Other	1195	6.1%
Unknown	22	0.1%
<b>White</b>	8147	<b>41.7%</b>
TOTAL	19540	100.0%

For Aggravated Assault (CCC 268):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	149	6.1%
<b>Black</b>	708	<b>28.9%</b>
Brown	427	17.4%
Other	207	8.4%
Unknown	2	0.1%
<b>White</b>	960	<b>39.1%</b>

TOTAL	2453	100.0%

For Sexual Assault (CCC 271):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	323	4.9%
<b>Black</b>	1851	<b>28.0%</b>
Brown	1016	15.4%
Other	270	4.1%
Unknown	3	0.0%
<b>White</b>	3149	<b>47.6%</b>
TOTAL	6612	100.0%

For Aggravated Sexual Assault (CCC 273(1)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	153	6.1%
<b>Black</b>	722	<b>28.9%</b>
Brown	427	17.1%
Other	210	8.4%
Unknown	2	0.1%
<b>White</b>	982	<b>39.3%</b>
TOTAL	2496	100.0%

For Sexual Assault Cause Bodily Harm (CCC 272(1)(c)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	5	3.2%
<b>Black</b>	50	<b>32.5%</b>
Brown	21	13.6%
Other	4	2.6%
Unknown	0	0.0%
<b>White</b>	74	<b>48.1%</b>
TOTAL	154	100.0%

For Possession of Property Obtained by Crime, Over, (CCC Section 354(1)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	539	5.0%
<b>Black</b>	2189	<b>20.5%</b>
Brown	1112	10.4%
Other	737	6.9%
Unknown	5	0.0%
<b>White</b>	6094	<b>57.1%</b>
TOTAL	10676	100.0%

For Robbery (CCC Section 344):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	499	3.7%
<b>Black</b>	5290	<b>39.1%</b>
Brown	1502	11.1%
Other	489	3.6%
Unknown	3	0.0%
<b>White</b>	5751	<b>42.5%</b>
TOTAL	13534	100.0%

For Manslaughter (CCC 234):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	6	8.1%
<b>Black</b>	27	<b>36.5%</b>
Brown	6	8.1%
Other	4	5.4%
Unknown	0	0.0%
<b>White</b>	31	<b>41.9%</b>
TOTAL	74	100.0%

For Murder (CCC 235(1)):

Skin colour	Charged and Arrested	% Charged and Arrested
(no entry)	8	3.8%
<b>Black</b>	77	<b>36.5%</b>
Brown	19	9.0%
Other	9	4.3%
Unknown	0	0.0%
<b>White</b>	98	<b>46.4%</b>
TOTAL	211	100.0%

Note that in all of these suspected violations of the law (typically considered to be serious or major crimes of an indictable nature) where there are definite victims or complainants, police are normally required arrest and charge suspects. Police officers rarely have the opportunity to exercise discretion, or bias, in responding to these violations.

In all of the above types of crime, blacks are also disproportionately charged and arrested with such offences compared to whites, in relation to the population of blacks and whites (8.1% and 62.7%) in Toronto. There may be many reasons, including socio-economic factors, for why a disproportionately large number of blacks are found to be in violation of serious or major crimes in Toronto. However, these and other factors associated with the overrepresentation of blacks in “available” populations that are more likely to come to the attention of the police because of high risk and serious behaviour, and to involve low levels of discretion by police officers cannot be attributed to racial bias on the part of police officers. In such cases, the police are fulfilling their mandate by responding to serious situations.

## **DDEVELOPING A SEVERITY SCORE FOR PERSONS IN THE DATA BASE**

The review of the police decision making literature included in Part I revealed that the level of “risk” posed by a person will have a significant effect on the decisions of

police officers in encounter situations. To provide a more accurate assessment of the context within which police decision making occurred, and to address a major shortcoming of the analysis conducted by the *Star*, a Severity Score for previous criminal background was developed for those persons whose vehicles were stopped or who were searched. This was designed to provide insights into how the decision making of the police may be affected by the degree of risk presented by the person stopped or searched.

A Severity Score was calculated for every arrest where investigative record checks were performed for any given individual. The Severity Score was calculated as follows: it begins at zero (0), and is incremented for each of the 6 investigative record checks that was performed AND where the record check result was positive. Where the investigative record check was not performed or the record check result returned was negative, there would be no contribution to the Severity Score (thus, the absence of a positive record check it can be assumed that there is no prior record of violation(s)).

There are six possible types of Investigative Record Checks in the *Star* data:

- 1 - CPIC (Canadian Police Information System)
- 2 - MANIX (Master Name Index)
- 3 - Previous Conviction
- 4 - On Bail
- 5 - On Parole
- 6 - On Probation

Each field had a 'Y' for person having that record and 'N' for not having it. A score of 1 was given to Y and 0 to N and this was totaled for all the six fields. The minimum score was 0 (no prior record) and the maximum possible score was 6.

Using this method of calculation, an individual's Severity Score could range from a minimum of zero (0) to a maximum of six (6). For example, an arrested individual who has no positive prior record would receive a 0; another person who is positive only for a previous conviction, being out on bail and being on parole (and not the others) would receive a 3; and, a another person who is positive in all 6 types of record checks would be assigned a Severity Score of 6.



Investigative record checks were certainly not done for every charge, or even every arrest, or if such checks were carried out, they were not entered into the database. Where an investigative record check was performed for any particular arrested individual, the number of checks performed varied between one and six. A maximum of 6 were possible, chosen from the 6 types of record checks noted above.

Analysis of the data indicates that there is a very rough trend line whereby the number of checks performed increases with the nature of the charge, and whether it was a summary or indictable type of criminal charge. However, there is no definitive pattern.

### **Form 9 Release x Skin Colour x Criminal Background**

The *Star* states that Blacks are less favorably treated **on a consistent basis** by being less likely to receive releases under the terms of Form 9 than Whites. In fact, analysis of the data indicates that there are **many** common offences of varying nature and severity where the proportion of arrested Blacks who are released under Form 9 is the same or less than the proportion of arrested Whites. *Overall, there is no significant statistical difference between the proportions of Form 9 releases for arrested Blacks compared to arrested Whites.*

However, the numerical data presented by the *Star* do reveal that the *proportion* of arrested Blacks who are favorably released under the terms of Form 9 is less than that of arrested Whites. There are a variety of reasons that may account for this, other than racial profiling on the part of the police. The literature review in Part I identified many factors, including the circumstances surrounding the violation, aggravating or mitigating circumstances, the nature of the offence, the behavior of the suspect and the professional judgment of the police officer. These are important considerations that cannot be captured in a database.

One aspect of the database information that the *Star* briefly considered is the “criminal background” found in the Investigative Record Check tables. However, the *Star* did not include any numerical evidence or analysis to support its claim that “whites and black (sic) with similar background (sic) still received different release treatment”.

Consider a suspect who is charged with an offence in violation of his/her conditions of bail, parole or probation, or is a repeat offender with a history of similar infractions. Such a discovery would be expected to have a negative effect on the probability of a favorable release under the terms of Form 9 (an expectation that would be an element of public safety and protection). Therefore, the decision of police not to release such a suspect could be based on criminal background or a requirement triggered by the violation predefined conditions of bail, parole or probation—rather than racial bias.

An analysis was carried out on all charges where an arrest (of any type) was made AND where a record check was performed. The results are as follows:

	Type of Offence	Arrests with Checks	Average Severity Score
(No Entry) <sup>1</sup>	Any	10,472	0.72
<b>Black</b>	Any	<b>84,564</b>	<b>2.28</b>
Brown	Any	49,840	1.59
Other	Any	20,094	1.69
Unknown	Any	606	1.86
<b>White</b>	Any	<b>218017</b>	<b>2.11</b>
TOTAL		383,593	

<sup>1</sup> “(No Entry)” refers to an empty field in the database for that individual arrest.

The figures indicate that the Severity Score for Blacks (2.28) is marginally higher than for Whites (2.11) in arrests for all types of charges. Thus, the overall probability for Blacks of favorable release under the terms of Form 9 should be the same or only marginally higher than for Whites, based on consideration of the Severity Score from investigative record checks.

However, a different pattern emerges for suspects charged with “simple possession” drug offences. A breakdown in the numbers of charges and type of drug is presented in the following table:

Count	CATEGORY	NAME
85	Dual	Possession of a Narcotic N.C.A. 3(1)
132	Dual	Possession of Cannabis N.C.A. 3(2)
864	Dual	Possession of Cocaine N.C.A. 3(2)
100	Dual	Possession of Hashish N.C.A. 3(2)
111	Dual	Possession of Heroin N.C.A. 3(2)
1149	Dual	Possession of Marihuana N.C.A. 3(2)

Count	CATEGORY	NAME
2	Dual	Possession of Morphine N.C.A. 3(2)
3	Dual	Possession of Opium N.C.A. 3(2)
33	Dual	Possession of Restricted Drug Sched. H F.D.A. 47(2)
7649	Dual	Possession of Cocaine C.D.S.A. 4(3)
330	Dual	Possession of Controlled Substance sched. I C.D.S.A. 4(3)
1173	Dual	Possession of Controlled Substance sched. III C.D.S.A. 4(6)
74	Dual	Possession of Controlled Substance (under) sched. II C.D.S.A. 4(5)
662	Dual	Possession of Heroin C.D.S.A. 4(3)
19	Dual	Possession of Opium C.D.S.A. 4(3)
359	Indictable	Possession of Cannabis (over) C.D.S.A. 4(4)
4364	Summary	Possession of Cannabis (under) C.D.S.A. 4(5)
29	Dual	Possession of L.S.D. C.D.S.A. 4(6)
783	Dual	Possession of Marihuana (over) C.D.S.A. 4(4)
385	Dual	Possession of Hashish (over) C.D.S.A. 4(4)
156	Dual	Possession for the Purpose Hashish (over) C.D.S.A. 5(3)(a)
8273	Dual	Possession of Marihuana (under) C.D.S.A. 4(5)
466	Dual	Possession of Hashish (under) C.D.S.A. 4(5)
112	Indictable	Possession of a Restricted Drug, schedule F.D.A. Section 31
<b>27313</b>		<b>TOTAL</b>

Figures presented in the next table reveal that, for those persons who were arrested and charged for “simple possession” for the above-noted drug offences, the Severity Score for Blacks is **2.84** and for Whites is **2.24**. Through the use of SPSS (Statistical Package for the Social Sciences), an ANOVA (analysis of variance) and a Bonferroni comparison (a statistical method of comparison that was performed at the standard level of acceptable error of  $\alpha = 0.05$ , such that it is correct 19 times out of 20) showed that this difference is statistically significant. Thus, the overall probability for Blacks of favorable release under the terms of Form 9 for this class of offences is expected to be significantly lower than for Whites, based solely on consideration of the Severity Score from investigative record checks.

	Type of Offence	Arrests with Checks	Average Severity Score	Standard Deviation
(No Entry)	Simple Drug Possession	56	2.07	1.847
<b>Black</b>	Simple Drug Possession	<b>8,359</b>	<b>2.84</b>	1.481

Brown	Simple Drug Possession	1,917	2.21	1.649
Other	Simple Drug Possession	1,168	2.26	1.633
Unknown	Simple Drug Possession	35	2.71	1.582
<b>White</b>	Simple Drug Possession	<b>14,660</b>	<b>2.24</b>	1.637
TOTAL		26,195 <sup>1</sup>		

<sup>1</sup> This figure for “simple possession” arrests with checks (26,195) is lower than “simple possession” arrests (27,313) because some arrests either did not involve criminal background checks or the results were not contained in the database.

These findings suggest that Blacks who are arrested and charged with “simple possession” drug offences *dissimilar as a group* from the population of Whites who are arrested and charged with similar “simple possession” drug offences. And, significantly for purposes of the present discussion, Blacks who are arrested and charged with the “simple possession” drug offences can also be considered to be a *unique subpopulation (whose previous criminal histories and bail, parole and probation histories are more extensive) within the much larger population of Blacks charged with all other offences.*

The *Star* asserts that the differences in aggregate release rates under Form 9 for Blacks and Whites proves that police officers in the T PS engage racial profiling. The present analysis suggests an *alternative explanation* for the lower probability of favourable release under the terms of Form 9 for Blacks than for Whites who are arrested and charged with similar “simple possession” drug offences. This finding directly challenges the accusation of the *Star* that the police are racially-biased against Blacks “in certain cases where police have discretion to use personal judgment.” Rather, the present analysis indicates that police officers in the TPS are more likely to not release persons who have a high Severity Score and that Blacks compose a higher portion of the “available” population of persons with criminal backgrounds and previous involvement in the criminal justice system. Simply stated, Blacks who are arrested and charged with “simple possession” drug offences tend to have a more extensive criminal backgrounds than their White counterparts. Furthermore, if the *Star’s* accusation that the police are racially biased against Blacks was valid, then the probability of favorable release under

the terms of Form 9 for Blacks with arrested and charged with all other types of offences would be lower. Analysis of the data does not indicate this.

### Arrests for Show Cause x Skin Colour

The *Star* asserts that Blacks are more likely to be held for Show Cause than Whites, in cases where the charge is that of “simple possession” of a drug. However, statistical analysis has revealed that Blacks arrested for “simple possession” drug offences tend to possess a more extensive criminal backgrounds and to have a higher Severity Score than their White counterparts. A more valid comparison for the *Star* would have been the entire population of persons who were arrested.

It is important to note that information on skin colour is not recorded with the Charge information, but rather with Arrest information and Arrests occur in only about 60% of the charge cases. It is not known how the *Star* identified skin colour in cases where there was a charge but no arrest.

Figures in the following table indicate that, when all types of arrests are considered, the percentage of Blacks that were arrested and detained for Show Cause (95.7%) was only very slightly higher in comparison to Whites (93.0%).

Skin Colour	Arrested (all types)	Arrested and Detained for Show Cause	% Show Cause
(No Entry)	1,203	1,017	84.5%
<b>Black</b>	<b>94,568</b>	<b>90,493</b>	<b>95.7%</b>
Brown	40,291	37,786	93.8%
Other	17,982	16,650	92.6%
Unknown	479	443	92.5%
<b>White</b>	<b>193,454</b>	<b>179,972</b>	<b>93.0%</b>
	347,977	326,361	

Intuitively, this difference appears marginal and is due to random variability, meaning that there is no expectation that two figures will occur in exactly the same proportion. In fact, the same formal chi-square ( $\chi^2$ ) test for “goodness of fit” to compare the observed frequency distribution (the number of Whites vs. Blacks who are actually arrested and detained for Show Cause) to the expected frequency distribution (the **theoretical** number of Whites vs. Blacks who are arrested and detained for Show Cause

if the proportions were **exactly** the same) can be utilized. Using the same process as the previous formal chi-square “goodness of fit” test,  $\chi^2_{\text{degrees of freedom}, \alpha} = \chi^2_{n-1, \alpha} = 62.1359 < 124.34$ . This means that the null hypothesis is accepted and it can be concluded that the proportion of suspects arrested and detained for Show Cause are equal in proportion to those who are arrested, for all racial categories.

In summary, when considering arrests of all types, the detention of Blacks for Show Cause is not statistically different that for Whites. The proportions of each racial group from this data provides no evidence of a “racial bias by police” “where police have discretion to use personal judgment” to detain suspects for Show Cause.

### **Employment Status and Patterns of Charging and Arrest**

The *Star* suggests that suspects with the perceived negative factor of unemployment are less favorably treated and are less likely to be immediately released by the police. The *Star* states that, “some factors...appeared to negatively affect one’s chances...such as unemployment and non-citizenship.” However, no numerical evidence or analysis are presented in support of this assertion. Additionally, the *Star* analysis did not consider factors such as criminal background or type of offence that may influence the release decision.

There are eight categories of employment status in the database:

- 1 - Employed
- 2 - Self-employed
- 3 - Student
- 4 - Employed student
- 5 - Retired
- 6 - (No entry)
- 7 - Other
- 8 - Unemployed

### **Employment Status x Criminal Background**

To perform this analysis, employment status types 1 to 7 were grouped together (since they are “not unemployed”), while type 8 was considered separately as “unemployed”. The same Severity Score system was used to compare the employment status to criminal background (where again, the

Severity Score can assume a value from 0 to 6, with a higher score indicating a greater number of criminal background checks that were confirmed positive). The following table presents the results of the analysis.

	Employment Status	Arrests with Checks	Average Severity Score
(No Entry)	Employed / Self-employed / Student / Employed student / Retired / Other / no entry	9,023	0.61
<b>Black</b>	(as above)	<b>47,890</b>	<b>1.91</b>
Brown	(as above)	32,549	1.34
Other	(as above)	11,458	1.18
Unknown	(as above)	366	1.33
<b>White</b>	(as above)	<b>121,518</b>	<b>1.69</b>
TOTAL		222,804	

	Employment Status	Arrests with Checks	Average Severity Score
(No Entry)	Unemployed	414	1.68
<b>Black</b>	Unemployed	<b>31,380</b>	<b>2.83</b>
Brown	Unemployed	14,376	2.11
Other	Unemployed	7329	2.45
Unknown	Unemployed	213	2.74
<b>White</b>	Unemployed	<b>82,262</b>	<b>2.72</b>
TOTAL		135,974	

In the first table of suspects whose employment status is “not unemployed”, the average Severity Scores are 1.91 for Blacks and 1.69 for Whites. This means that, even among employed blacks, there were higher severity scores than employed whites. In the second table, the average Severity Scores are considerably higher for both unemployed Blacks (2.83) and unemployed Whites (2.72). This indicates that blacks who were employed and employed had higher severity scores.

### **Employment Status x Type of Offence**

There are four classes of offences in the database, indicated by increasing severity:

- 1 - Non-Criminal Code of Canada (Municipal By-Laws, and Provincial and Federal Statues)
- 2 - Summary Conviction offences

- 3 - Dual Procedure offences
- 4 - Indictable offences

The following table presents the findings from an analysis in which type of offence is considered with employment status, using the same employed/not employed scheme as set out in the previous table.

<b>Class of Offence</b>	<b>Employment status</b>	<b>Arrests</b>	<b>% of type</b>
Not Criminal Code	Employed / Self-employed / Student / Employed student / Retired / Other / no entry	137,013	27.3%
Summary	(as above)	52,736	10.5%
Dual	(as above)	237,083	47.3%
Indictable	(as above)	74,656	14.9%
		501,488	100.0%

<b>Class of Offence</b>	<b>Employment status</b>	<b>Arrests</b>	<b>% of type</b>
Not Criminal Code	Unemployed	16,817	6.7%
Summary	Unemployed	13,402	5.3%
Dual	Unemployed	159,119	63.4%
Indictable	Unemployed	61,634	24.6%
		250,972	100.0%

A review of the figures in above two tables indicates that the proportion of serious offences (typically in the Dual or Indictable classes) are higher for those who are “unemployed” in the second table, than for those who are “not unemployed” from the first table. Therefore, it can be concluded that the dispositions and outcomes for suspects who are arrested are likely to be less favorable for those who are “unemployed” due to the higher proportion of serious violations that they are accused of committing.

### **Summary of Employment Status Findings**

From this analysis, it can be concluded that the unfavorable treatment, measured in this instance by a decreased likelihood of immediate release from arrest, is related to the severity of criminal background as well as the nature of the offence, rather than to a bias on the part of TPS police officers toward those who are unemployed.



## FORM 9 RELEASE x CITIZENSHIP STATUS

The *Star* asserts that Canadian Citizenship enhances the chances of immediate release, but did not include any numerical evidence or analysis to support this claim. An analysis of all arrests (of any type, where there was a release in any form) was made in comparison to the proportion of arrests where there was a favorable release under Form 9. Canadian Citizens (23.4%) are only slightly more likely to be released under the terms of Form 9 than Landed Immigrants (20.0%), but the same as Refugee Claimants (23.6%) and less than remaining groups.

	Arrests with Release	Arrests with Form 9 Release	% Form 9 Release
(No Database Entry)	25,524.00	9,572.00	37.5%
<b>Canada Citizens</b>	146,777.00	34,322.00	<b>23.4%</b>
Landed Immigrants	21,580.00	4,316.00	20.0%
Other	4,411.00	1,563.00	35.4%
Refugee Claimants	2,374.00	560.00	23.6%
Unknown	15,648.00	8,793.00	56.2%
	216,314.00	59,126.00	

## Citizenship Status x Severity Score x Employment Status

Further exploratory analyses were conducted to examine the relationship between citizenship status, Severity Score, and employment status. Preliminary results from this analysis indicate that there is a large minority of blacks who are serious, repeat offenders who are non-citizens and unemployed and who would, therefore, have high severity scores. It would be expected that this sub-population would be more likely to be charged, arrested, and held in custody. It is very difficult in the presentation format that is being used for this document to present the statistical data on this. Additional analyses would be required to identify the specific sub-populations and the factors associated the police decisions that are made in encounter situations.

## **SUMMARY AND THE REQUIREMENT OF ADDITIONAL DATA AND ANALYSES**

These selected analyses indicate that the analysis conducted by the *Star* was not only superficial, but was not sufficient to establish that the TPS engages in racial profiling. Further, the findings from the re-analysis illustrate that when the data are analyzed in a manner that considers the context within which police officers make decisions, the influence of skin colour on decision making is not statistically significant.

The review of the racial profiling literature in Part I has identified other analyses that should be conducted in an attempt to determine whether police officers are engaged in racial profiling. As previously noted, there are severe limitations in usefulness of the CIPS data that were provided to the *Star* in assessing racial profiling. In all analyses it is clear that there is considerable variation in the figures for Blacks and other skin colours. This precludes the use of raw frequency counts as the basis for any firm conclusions as to the treatment of citizens by the police in encounter situations.

The limitations of the data set provided to the *Star* preclude further statistical analysis that might provide more accurate information on the decision making of police officers in the TPS. These analyses would include, but would certainly not be limited to an examination of the relationship between:

- the race of the police officer and
- the specific location of the encounter and the “available” population
- the time of citation and arrestee skin color
- officer characteristics [i.e. age, gender, skin color, education, rank and years of service] and arrestee attributes [i.e. age, sex, skin color, employment, immigration,
- offense type, previous history]
- the variance in decisions made by individual patrol officers within and between the patrol districts

Although a more complete data set would allow additional statistical analyses, a major finding of the review of published research in Part I of this document is that statistical analyses alone are insufficient to explore the issue of racial profiling in policing. Any future investigation into the issue of racial profiling should involve

extensive field observations and interviews with police officers as well as with persons involved in specific encounters with the police. These interviews should be conducted as soon as possible following encounters so as to avoid the difficulties associated with using anecdotal evidence and information based solely on perceptions.