



ARCHIVED - Archiving Content

Archived Content

Information identified as archived is provided for reference, research or recordkeeping purposes. It is not subject to the Government of Canada Web Standards and has not been altered or updated since it was archived. Please contact us to request a format other than those available.

ARCHIVÉE - Contenu archivé

Contenu archivé

L'information dont il est indiqué qu'elle est archivée est fournie à des fins de référence, de recherche ou de tenue de documents. Elle n'est pas assujettie aux normes Web du gouvernement du Canada et elle n'a pas été modifiée ou mise à jour depuis son archivage. Pour obtenir cette information dans un autre format, veuillez communiquer avec nous.

This document is archival in nature and is intended for those who wish to consult archival documents made available from the collection of Public Safety Canada.

Some of these documents are available in only one official language. Translation, to be provided by Public Safety Canada, is available upon request.

Le présent document a une valeur archivistique et fait partie des documents d'archives rendus disponibles par Sécurité publique Canada à ceux qui souhaitent consulter ces documents issus de sa collection.

Certains de ces documents ne sont disponibles que dans une langue officielle. Sécurité publique Canada fournira une traduction sur demande.

**Race-Based Criminal Justice Data in Canada:
Suggestions for Moving Forward**

Report Prepared for Public Safety Canada

**The views in this report reflect those of the author and do not necessarily
reflect the views of Public Safety Canada**

**By Akwasi Owusu-Bempah
March, 2011**

Executive Summary

Background

Since 1995, the national Metropolis Project has supported research, public policy development and knowledge mobilization on migration, diversity and immigrant integration in cities in Canada and around the world. In an attempt to advance discussion within the Metropolis Justice, Security and Policing domain, Public Safety Canada along with the Correctional Service of Canada organized a workshop entitled *Criminal Justice Diversity and Data* for the 13th National Metropolis Conference in Vancouver, British Columbia. As part of an effort to add clarity to a complex issue, this paper, originally presented at the Conference, examines the current and future state of race-based data collection at the policing level in Canada.

Context

Debate over the collection of racial or ethnic data within the Canadian criminal justice system dates as far back as 1929. Discussions about the collection of this data have more recently emerged in the context of broader debates about race, crime, and the administration of criminal justice. On the one hand, allegations of racial discrimination have been levelled against the justice system. On the other, it has been suggested that racial minorities are disproportionately involved in criminal activity. Unfortunately, at present, there exists little criminal justice data with which to test either of these claims, despite numerous calls for the collection of such data. Several major attempts have been made in Canada to collect racial and ethnic data, particularly in the policing sector. These attempts, however, have not paved the way for systematic data collection.

Supporters argue that political sensitivity should not suppress the collection of race-relevant criminal justice statistics, and that such statistics are necessary in order to:

- Monitor the processing of racial minorities through the criminal justice system;
- Provide useful information that is necessary for the development of criminal justice and social policy;
- Determine, objectively, if there is a relationship between race and crime; and
- Provide transparency within the criminal justice system.

Detractors, on the other hand, argue that collecting and disseminating such data is problematic because:

- There are questions about the accuracy of criminal justice data (particularly police statistics);
- The data could be socially disruptive and contradict the principle of equality under the law;
- The data could be used to support biological theories of crime; and
- The data could be detrimental to the system and could ultimately jeopardize public safety.

Methodological issues inherent in attempting to document racial data, as well as legal and privacy issues related to the reporting of this data to national agencies, are also perceived as obstacles to the implementation of systematic data collection. A review of academic and official

government documents, as well as consultations with stakeholders, reveals that the collection of race-relevant criminal justice data is most commonly viewed within the narrow confines of the “racial profiling” debate. This is largely a product of: 1) the context within which the discussion on race-based data collection arose; 2) an over reliance on empirical research and literature from the United States in the search for contextualization and possible solutions.

Current practices

Information on individual alleged offenders and victims processed by the criminal justice system, including descriptions of Aboriginal status and racial background, is routinely collected from the records of criminal justice agencies. However, because this information is collected to meet the disparate operational needs of the agencies involved, the data often lack the consistency necessary for comparative purposes.

Police services, for example, have the ability to collect Aboriginal and racial data, and many are, in fact, currently recording such data for intelligence purposes and/or when it is relevant to a criminal investigation. The internal data management systems utilized by police services collect detailed information on the racial background of accused persons and the victims involved in crime incidents. While some police forces currently report Aboriginal information to the CCJS, the majority of forces refuse to do so. The Integrated Criminal Court Survey and the Integrated Correctional Survey are also valuable sources of information on individuals processed through the criminal justice system. Racial information is not systematically collected as part of the Integrated Criminal Court Survey, however, this may be included in the survey where deemed important by stakeholders. The Integrated Correctional Survey currently collects self-reported racial information of individuals entering the correctional system. Furthermore, the potential exists to link police-reported and court data to corrections records, which would allow for a more extensive examination of criminal justice and social policy issues.

The vast majority of data on the racial background of individuals processed through the Canadian criminal justice system is used for internal purposes and is not made publicly available in any systematic way. The most readily available criminal justice data that includes information on race is the *Corrections and Conditional Release Statistical Overview*, produced by Public Safety Canada; this document includes a “one day snapshot” of the race of all offenders under federal supervision.

Conclusions and recommendations

The need for adequate data on the racial background of those who come into contact with the criminal justice system has been firmly established. There currently exists a variety of data that could potentially be very useful for examining disparities in criminal justice processing and for the development and monitoring of criminal justice and social policy; in areas where data is not currently collected, the potential to do so in the future certainly does exist. However, apprehension surrounding the collection of race-based criminal justice data persists, particularly within the policing sector. Although some of this concern is based on recognition of very real practical and financial obstacles inherent in the implementation of systematic data collection, much of the concern arises from the misconception that data collection is only useful for

examining “racial profiling” (e.g., stop and search practices, or the “Driving While Black” phenomenon).

While it has been acknowledged that police stop and search practices are very important as they influence who enters the criminal justice system, it may be prudent at this juncture to focus on the population who are captured by police and criminal justice figures after the arrest stage. We can then begin to examine whether there are racial differences in those who are processed through the system, changing the focus from stop and search to arrest disposals and subsequent treatment. In terms of policing, this could involve an examination of the proportion of individuals who have had no action taken against them, those who were referred to extra-judicial measures (in the case of youth), whether an individual was charged, and whether said charges were ultimately substantiated.

Within this framework, race-based criminal justice data would be treated as “indicators” that could be used to identify potential problem areas that may require closer attention. When viewed in this way, the true value of race-based data is not so much in its capacity to expose discrimination, but rather, in its ability to monitor the impact of criminal justice policies and practices to ensure fairness and equality. In this process, data collected could be reviewed by those in management capacities (who are responsible for setting policy) and those on the frontline (who are responsible for collecting the data and putting policy into practice). The data could also serve as a basis for dialogue between community groups and criminal justice agencies, helping to identify issues of mutual concern.

Introduction

This paper examines the collection of race-based criminal justice data in the Canadian context. Research has consistently illustrated that minorities, and racial minorities in particular, are over-represented in official crime and criminal justice statistics in all Western nations (Tonry, 1995). There are two explanations frequently employed to explain this phenomenon. First, it is argued that minorities tend to live in social conditions that put them at greater risk for criminal offending. Second, it is argued that minorities elicit a disproportionate amount of attention from the police and are discriminated against at the various stages of the criminal justice process (Roberts, 2001). In countries such as Great Britain and the United States, policy makers and researchers alike are able to document the extent to which racial disparities exist in their criminal justice systems by examining official statistics that include information on race. There is currently very little race-relevant criminal justice data available in Canada. Thus, we know little about the racial composition of those processed by the Canadian criminal justice system and, consequently, are ill-informed about how the system deals with these groups on aggregate.

Since 1995, the national Metropolis Project has supported research, public policy development and knowledge mobilization on migration, diversity and immigrant integration in cities in Canada and around the world. In an attempt to advance discussion within the Metropolis Justice, Security and Policing domain, Public Safety Canada along with the Correctional Service of Canada organized a workshop entitled *Criminal Justice Diversity and Data* for the 13th National Metropolis Conference in Vancouver, British Columbia. As part of an effort to add clarity to a complex issue, this paper, originally presented at the Conference, examines the current and future state of race-based data collection at the policing level in Canada. The first section of the paper provides a brief overview of literature on minority over-representation in the Canadian criminal justice system. The second section outlines the history of the debate over the collection of race-based criminal justice data and provides the arguments both for and against the collection of said data. Next, the paper examines current data collection practices as well as areas where race-based data could, potentially, be collected. Finally, the paper concludes with a number of policy recommendations and suggestions for moving forward with the collection of race-based data.

Background

Racial overrepresentation in the Canadian criminal justice system

As indicated in the introduction, ample evidence exists to support the claim that racial minorities are over-represented in the justice systems of all Western nations, and Canada's experience is no exception (Tonry, 1995; Canada, 1996; Commission, 1995). Currently, the debate continues over the causes of this over-representation—i.e., whether racial minorities are over-represented as perpetrators of crime or whether they face discrimination within the Canadian criminal justice system. The answer, based on the (limited) data that is currently available, is that both hypotheses are correct (Wortley and Owusu-Bempah, 2011). However, these phenomena are difficult to discern in Canada due to the lack of race-relevant criminal justice data. The justice system, and the police in particular, have been the focus of much of the current discussions and investigations of discrimination in Canada (Canada, 1996; Manitoba, 1991; Commission on

Systemic Racism in the Ontario Criminal Justice System, 1995; Wortley and McCalla, 2003; OHRC, 2003; Tanovich, 2006; Tator and Henry, 2006).

In 1992 the Commission on Systemic Racism in the Ontario Criminal Justice System (hereafter referred to as the Commission) was established to examine the extent to which criminal justice practices, procedures, and policies in Ontario reflect systemic racism. As part of their investigations, the Commission investigated the exercise of police discretion to stop and question citizens on the street or in their vehicles by asking Toronto residents how often they had been stopped by the police over the past two years. The results indicated that black residents were stopped at a higher rate (28%) than both white (18%) and Chinese (15%) respondents (Commission, 1995)¹. While the Commission was clear in stating that these findings are not indicative of individual discrimination on the part of police officers, it did suggest that racial minorities may be receiving unfair treatment in some situations.

Since the findings of the Commission were released in 1995, several other studies on police stop, search, and arrest practices have been conducted in Ontario and Quebec. The first study, conducted in Toronto by the *Toronto Star* newspaper, provided evidence that black people are overrepresented in a variety of police statistics. In 2002, the *Toronto Star* obtained and analysed five years worth of Toronto police data, paying particular attention to areas where police have high levels of discretion, including “out of sight”² traffic offences and simple drug possession charges. The *Star’s* analysis found that black motorists in Toronto accounted for 33.6% of “out of sight” offences, while comprising only 8.1% of the Toronto population according to the 1996 Census. Whites, on the other hand, accounted for 52.1% of these offences while comprising 62.7% of the Toronto population (Rankin, 2002b). The study also found that black people were over-represented in drug possession charges and were less likely to be released at the scene than were white people. The data indicated that 23.6% of those arrested on one count of simple drug possession were black (compared with 8.1% of the population) and 63.8% were white (compared with 62.7% of the population). Furthermore, 76.5% of white accused were released at the scene on drug possession charges, compared with 61.8% of black accused. Pre-trial detention rates also varied between the two groups, as 15.5% of black accused were held until their trial compared to 7.3% of whites. These findings held constant, even after controlling for other relevant factors (Rankin, 2002a).

In late 2009, after a lengthy court battle that made its way to the Ontario Court of Appeal, the *Toronto Star* obtained data on the racial composition of those stopped and documented by the Toronto Police Service, as well as updated arrest data similar to that obtained in 2002. Analysis of the 2003-2008 data reveals similar trends as those found in the aforementioned study. Black motorists accounted for 32.5% of “out of sight” traffic offences while comprising only 8.4% of Toronto's population according to the 2006 Census. White motorists accounted for 50% of “out of sight” offences while making up 53.1% of the population (The Toronto Star, 2010). Similarly, the data indicated that blacks were released at the scene for one count of simple drug possession 58.3% of the time, while whites were released 64.5% of the time. Blacks were held for bail 14.3% of the time compared with 10.2% for whites (Ibid). This second study by the *Toronto Star*

¹ This study was replicated in 2007, producing remarkably similar results (Wortley and Owusu-Bempah, 2009)

² These offences are typically discovered after a stop has been made and include: driving while under suspension, failing to carry a licence, failing to change address on a licence, and driving without insurance.

is unique in that it also includes data on who the police choose to stop and document. The analysis of over 1.7 million “contact cards” filled out by the Toronto police between 2003 and 2008 found that black people comprised almost 25% of those documented by the police while representing only 8.4% of the population. Interestingly, the data also indicates that black people were overrepresented in police contact cards for all areas of the city, regardless of neighbourhood crime rate or racial composition. Both brown and white people were also overrepresented in the contact card database (17% and 55% respectively) compared with their proportion of the population (14.7% and 53.5% respectively). Those in the “Other”³ category (6%) were underrepresented in the contact card database compared with their proportion of the Toronto population (23.8%) (Rankin, 2010a, 2010b).

The “Kingston study”, as it has come to be known, is particularly notable as it is the only study of its kind in Canada to be conducted with the cooperation of a police service. After receiving a number of complaints from the city’s small black population, the chief of the Kingston Police Service decided to initiate a data collection project with the assistance of an academic expert. For twelve months between 2003 and 2004, Kingston police officers were mandated to document the race, age, gender, and home address of every individual that they stopped and questioned, as well as the time and location of the stop, the reason for the stop, and the final outcome of the interaction (i.e., arrest, ticket, warning, etc.) (Wortley and Marshall, 2005). In total, over 16,500 vehicle and pedestrian stops were documented and measures were taken to exclude individuals who did not reside in Kingston and those who were stopped more than once from the final count. As with the results from the Toronto studies, the findings in Kingston indicate that black residents were more likely to be stopped by the police than members of any other racial group. Overall, the researchers found that a black person was 370% more likely to be stopped by police than a white person and 140% more likely to be stopped than an Aboriginal person in Kingston during the study period. Furthermore, an Aboriginal person was 150% more likely to be stopped than a white resident in the city (Ibid).

Finally, a study conducted for the Ipperwash Inquiry into the death of Dudley George reveals that blacks and Aboriginals were much more likely to be involved in police use of force cases investigated by the Special Investigations Unit in Ontario between 2000 and 2006 than were members of any other racial group.⁴ For example, the following are the rates of civilian death or serious injury directly caused by police use of force by race per 100,000 population: whites (2.48 per 100,000); blacks (13.38 per 100,000); Aboriginals (15.4 per 100,000); and South Asians (0.54 per 100,000) (Wortley, 2006).

Although the studies documented above indicate that black and Aboriginal Canadians are overrepresented in police stop, search, and use of force practices in some Canadian cities, they tell us little about whether this overrepresentation is due to increased levels of offending on the part of blacks and Aboriginals or the product of individual and systemic bias on the part of police. While these studies are important in elucidating the overrepresentation of certain racial

³ “Other” is any visible minority other than Black or South Asian, West Asian or Arab (The Toronto Star, 2010: 2).

⁴ The Special Investigations Unit is a civilian law enforcement agency that is called on to conduct investigations into all incidents in which a civilian is seriously injured or killed by the actions of the police.

minority groups at the front end of the criminal justice system, the methods and findings of these studies have been challenged by a number of critics (Gold, 2003; Gabor, 2004; Melchers, 2006).

The overrepresentation of certain racial minorities in the Canadian criminal justice system has also been found in various studies of the Canadian criminal courts. A study conducted on behalf of the Commission on Systemic Racism in the Ontario Criminal Justice System, for example, found that black accused are less likely to be released at the scene of a crime by the police and are more likely to be detained before trial than are white accused. The racial differences were greatest for drug offences, where 31% of black offenders were detained before trial compared to 10% of whites. These differences remained even after controlling for relevant factors such as the criminal history of the offender (Roberts and Doob, 1997).

A study conducted by Kellough and Wortley (2002) provides further evidence of racial disparity in pre-trial decision-making. This study tracked over 1,800 criminal cases from two Toronto bail courts during a six month period in 1994. The findings indicate that 36% of black accused were detained before trial compared to 23% of accused from other racial backgrounds. Again, race remained a significant factor even after controlling for relevant factors such as flight risk and perceived danger to the public (Kellough and Wortley, 2002). It should be noted that the denial of bail could have serious consequences for an accused person as they proceed to trial. Individuals who have been denied bail are more likely to be found guilty than are those who are released before trial. Kellough and Wortley also argue that the denial of bail might be used as a way to coerce guilty pleas from individuals who are reluctant to be held in detention centres for extended periods of time.

Table One (below) provides information on the race of individuals under the supervision of the Correctional Service of Canada. We can see that three groups are over represented amongst those under federal supervision in comparison to their representation in the Canadian population: Aboriginals (17.1% of federal offenders vs. 3.8% of Canadian population); blacks (7.4% of federal offenders vs. 2.5% of the Canadian population); and those in the “other” category (5.0% of federal offenders vs. 3.0% of the Canadian population).

Table One

The Representation of Ethno-Racial Groups in Canada's Federal Corrections System (2008)

Racial Background	% of National Population	% Federal Correctional Population
White	80.0	66.6
Aboriginal	3.8	17.1
Black	2.5	7.4
Asian ³	6.7	2.9
South Asian	4.0	1.0
Other	3.0	5.0
TOTAL	100.0	100.0

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

² 2008 Federal Correctional Figures were taken from Public Safety Canada (2009) *Corrections and Conditional Release Statistical Overview: 2008*. These numbers include those in prison and those under community supervision.

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

⁴ The "Other" category includes all other racial groups, people with multiple racial backgrounds and those whose racial background is unknown.

*Adapted from Wortley and Owusu-Bempah, 2011.

The regional diversity of the Canadian population is reflected in the federal offender population. For example, in 2008/09 blacks accounted for 15.5% of federally supervised offenders in Ontario and Aboriginals accounted for 37.8% of those in the Prairies (Correctional Service of Canada). This information is undoubtedly essential for correctional policy and planning purposes, as well as for service delivery.

Public perceptions of minority criminality and minority participation in crime

As Roberts (2001) points out, there has been a tendency in Canada and other nations to "racialize" crime; that is, a tendency to develop associations between criminality and racial or ethnic origin (103). The impact of the racialization of crime is evident in the results of public opinion polls. A survey conducted in Ontario in 1995, for example, found that nearly half (45%) of respondents believed that there was a relationship between ethnicity and criminality. Of the respondents with this view, two-thirds selected "West Indians" or "blacks" as being the most responsible for crime (Henry et al., 1996). More recently, a 2008 poll conducted as part of a special crime series in the *Toronto Star* newspaper asked members of the public to estimate what proportion of Canadians with a criminal record were from visible minority groups. Respondents believed that over twice as many visible minority group members had a criminal record than the police records showed (36.7% perceived vs. 16.7% actual). The official data illustrated that visible minority group members were in fact under-represented amongst Canadians who had a criminal record compared with their proportion of the population (16.7% with criminal record vs. 20.0% of population) (Rankin and Powell, 2008). These public opinion findings have important consequences for minorities caught up in the system. Although relatively few in number, the tendency for the general public to overestimate visible minority criminality brings the objectivity of jury trials into question. As will be outlined in the next section, one of the main arguments

against the collection of race-based criminal justice data is that doing so protects racial minorities from unfair stereotyping. However, the results of the above surveys indicate that the lack of race-related criminal justice data may not only be failing to protect racial minorities from undue stigmatization, but may actually be leading the public to over exaggerate the extent to which racial minorities are involved in crime.

The absence of race-based data in the police, court, and correctional sectors limits our knowledge about racial differences in offending behaviour. The data that is available suggests that both black and Aboriginal Canadians may be over represented in certain types of crime. Based on victim characteristics, and the fact that most homicides are intra-racial (the victim and offender are both from the same racial group), we can discern that blacks and Aboriginals are over-represented amongst homicide offenders in Canada. A self-report survey conducted with high-school students in Toronto found that black, white, and Hispanic students had relatively similar rates of offending overall, while Asian and South Asian students tended to report less offending behaviour (Wortley and Owusu-Bempah, 2011). A recent publication from the Department of Justice (DOJ) also indicates that Aboriginals suffer from higher levels of intimate partner violence. Using data from the General Social Survey, the DOJ report shows that Aboriginal people in Canada were three times as likely as non-Aboriginals to suffer violence at the hands of a current or previous spouse or common-law partner, from 1999-2004 (DOJ, 2009).

Public perceptions of bias in the criminal justice system

Some criminal justice officials, like certain members of the public, believe that racial minorities are subject to discriminatory treatment within the Canadian criminal justice system. As part of their investigation, the Commission asked judges, defence council, and members of the public about whether or not they believed that there were racial differences in the administration of criminal justice in Ontario. A significant proportion of both judges (hired after 1989, the year that a reformed judicial appointment system was put in place) and lawyers (whose clientele were 40% or more racial minority), felt that minorities were treated differently in court than whites (Commission, 1995). Members of the public were also asked about bias in both policing and the criminal court system. The survey found that over half of black, white, and Chinese respondents believed that the police treat black people differently than white people. Similarly, over half of black respondents and one-third of both white and Chinese respondents felt that black people are treated differently in court than white people. This study was replicated in 2007, fifteen years after the initial study was conducted. What may be of surprise, in light of the numerous “race relations” initiatives that have been implemented over the past decade, is that the more recent study found that perceptions of bias have actually increased amongst black and white respondents over the past fifteen years. For example, in 1994, 76% of black respondents felt that the police treated black people worse or much worse than whites. By 2007 this figure had risen to 81%. Similarly, in 1994, 48% of black respondents believed that a black person would get a longer sentence than a white person charged with the same crime. In 2007 this figure had risen to 58% (Wortley and Owusu-Bempah, 2009).

While the explicit focus of this section was to provide evidence of racial disparities in criminal justice statistics, it is important to note that recent court cases have confirmed that discrimination does exist amongst Canadian police, the courts, and various correctional institutions. The following is a list of recent cases in which racial discrimination was confirmed by the courts:

Toronto (City) Police Service v. Phipps (2010), 325 D.L.R. (4th) 701 (Ont. Div. Ct.); R. v. Huang, [2010] B.C.J. No. 2627 (P.C.); Pieters v. Peel Law Association, [2010] HRT0 2411; McKinnon v. Ontario (Correctional Services), 2011 HRT0 591 (CanLII)⁵. Public acknowledgement by police leaders that racial bias is a problem in policing also provides support for this position (James, 2005: B01)

Debate over the collection of race-based criminal justice statistics in Canada

Background⁶

For the purposes of this paper, the term “race-based criminal justice statistics” will be used to describe criminal justice statistics that would identify the race or ethnic origin of suspects, accused persons, offenders, and victims of crime, as well as criminal justice employees. The term “race-based criminal justice statistics” is preferred over “race-crime statistics” because this data largely reflects criminal justice processing rather than rates of criminal offending. Furthermore, the term “race-crime statistics” presupposes a connection between race and crime (Owusu-Bempah and Millar, 2010). With the exception of sparse statistics on Aboriginal peoples, a handful of data on victimization and hate crime, and an annual “snapshot” identifying the racial background of individuals under the supervision of the federal correctional system, very little race-relevant criminal justice data has been made available by the Canadian criminal justice system. While discussion about the collection of race-based criminal justice statistics in Canada can be traced back to 1929, this discussion will be limited to the most current debate that commenced towards the end of the 1980s (Roberts, 1992). Initially, this debate was centered around questions of whether race-based criminal justice statistics were inherently “racist” and whether they could/would be used to discriminate against minority groups. Minority communities were concerned that the collection of race-based criminal justice statistics would be used to justify discriminatory policing practices directed towards them. Police officials, on the other hand, argued, at least initially, for the collection of race-based criminal justice statistics in order to better focus their policing efforts.

The current debate can be understood largely as a product of the strained relationship between police and minorities in the city of Toronto. Calls for the collection of race-based criminal justice statistics came precisely because there was a widely held belief amongst members of the public and some police officials that racial minorities, and blacks in particular, were contributing disproportionately to Canada’s crime rate (Gabor, 1994). In November 1986 the *Toronto Star* newspaper ran a special series documenting tension amongst residents and police in the Jane and Finch area of Toronto, largely a product of police shootings of black men. In 1989, a Toronto Police Inspector told a local community group that black people accounted for a disproportionate amount of crime in the Jane-Finch area of the city. His comments resulted in a backlash of anger amongst Toronto’s black community, and statistics on race and crime were labelled as being inherently racist. Shortly after the release, the police Inspector apologized for the comments and the Toronto Police Services Board followed by adopting a policy banning the collection or

⁵ Complainants in the latter two of these cases were individuals who work within the criminal justice system.

⁶ In addition to race-based data, there have also been calls for the collection of information about ethnicity, immigration status, language and religion in various sectors of Canadian society. These are important social characteristics that often overlap with one another. Despite the utility of these other forms of data, the focus here will be restricted to race.

publication of statistics relating to the “colour or creed of individuals, because they reinforce stereotypes, correlate ethnic groups with crime, and are contrary to fundamental values in society” (Johnston, 1994: 166).

In 1990, the Canadian Centre for Justice Statistics, Statistics Canada’s crime and justice branch, announced that it was going to begin collecting information on the racial origins of accused offenders and victims of crime. After sending a request to every police department across Canada, some police forces, such as those in Toronto and Ottawa, refused to collect the data and send it to the Centre. Three weeks after the initial announcement was made, Statistics Canada’s chief statistician announced that the plan had been abandoned, citing sensitivity and the unwillingness of some police departments to cooperate as reasons for said decision; he stated “[c]learly if information is considered by large numbers of people too sensitive and unwarranted, we would not want to insist that it be provided” (Fine, 1990). The following year, the debate about race-based criminal justice statistics re-emerged in the media after a Toronto Police Sergeant told the Toronto Crime Inquiry that Vietnamese and Mainland Chinese immigrants were responsible for a disproportionate amount of violent and vice-related crime in the Asian community. The Sergeant was reprimanded despite having a large amount of support within the Asian community (Johnston, 1994). After this incident there was a shift towards reevaluating the collection of race-crime statistics; support for the police Sergeant was strong and the argument that race-crime statistics were inherently racist had begun to lose strength.

It was about this time that academics entered into the debate on race-based criminal justice statistics. In the fall of 1991, the Centre of Criminology at the University of Toronto held a workshop on collecting racial data within the criminal justice system. The workshop was attended by more than thirty participants including members of the academic community and government representatives. A report of the workshops proceedings was compiled by Professor Tony Doob of the Centre of Criminology. In the proceedings, Doob notes that there seemed to be a general consensus amongst participants that race-based statistics should be collected within the criminal justice system. Most participants felt that such statistics were not only useful, but necessary in order to determine whether people of various backgrounds were being treated fairly. Points of concern related to the manner in which such data were to be collected (Doob, 1991). The intent of collection, according to the general consensus, began to shift from viewing race-based statistics as a police resource to a method of uncovering discrimination within the criminal justice system. Several years later, a special issue of the *Canadian Journal of Criminology* was published containing four academic articles relating to the collection of race-based criminal justice statistics in Canada. The main conclusions drawn by each of the four academics generally opposed the routine collection of race-based criminal justice statistics. Each academic raised concern over the idea of collecting statistics on “race” given that the concept of race is a social construct and not a biologically determined fact.⁷ They were also concerned with the use of police data, which are known to be a relatively poor indicator of actual levels of crime (Hatt, 1994; Johnston, 1994; Gabor, 1994; Roberts, 1994). Each academic had their own specific

⁷ In the contemporary Canadian context, race can be defined as “a socially constructed category used to classify humankind according to common ancestry and reliant on differentiation by such physical characteristics as colour of skin, hair texture, stature, and facial characteristics. The concept of race has no basis in biological reality and as such, has no meaning independent of its social definitions.” (Henry and Tator, 2005: 351). Race as we know it is a social, rather than natural phenomenon, which is both temporally and geographically specific.

reasons to object to the collection of race-based criminal justice statistics; only one of the four researchers suggested collecting such data on an intermittent basis (Roberts 1994: 182).

As part of the Commission on Systemic Racism in the Ontario Criminal Justice System, another University of Toronto criminologist was tasked with writing a paper outlining issues related to the collection of race-based criminal justice statistics, the practices of other Western nations, and a number of proposed policy options. Again, issues relating to the collection of race-based criminal justice statistics were highlighted (Commission, 1995). From the mid 1990s onwards, the collection of race-based criminal justice statistics received relatively little public attention, that is, until 2002 when the *Toronto Star* published its race and crime series (documented above). After the publication of this series, momentum increased amongst some community leaders and human rights activists who proposed collecting the race-based criminal justice data for anti-discrimination purposes. Several police services also contemplated the idea, with the Kingston Police Service being the only police force to formally do so. Today, police leaders still remain concerned about the methodological difficulties associated with the collection of race-based data and the perceived harm that could come from making such data public.

Throughout the course of the debate over the collection of race-based criminal justice statistics, ongoing discussions have been tabled concerning the utility of collecting Aboriginal data within the criminal justice system. Initiated in many ways by Aboriginal peoples' experiences with Canada's criminal justice system, the need for quality data in this area has been identified consistently across numerous reports, commissions, and inquiries. Much of the attention has focused on the need to measure the representation of Aboriginal people in the criminal justice system and to improve the system's overall response to Aboriginal accused, offenders, victims, and persons at risk (Kong and Beatie, 2005: 6).

For close to a decade, there have been discussions amongst police leaders and other relevant justice sector officials over the collection of information regarding Aboriginal status through the Uniform Crime Reporting survey. Although the suggestion to remove the Aboriginal category from the UCR has been considered, steps have been taken to improve data collection both nationally, and in particular jurisdictions. In 2008/09 a consultant set out to determine the feasibility of Aboriginal data collection by police services in Saskatchewan and to address the following questions:

1. What is the level of support among the Aboriginal community in Saskatchewan for the collection of Aboriginal identifiers by police?
2. What are the current practices among police services in Saskatchewan regarding the collection of Aboriginal identity?
3. How should police ascertain the Aboriginal identity of persons who come into contact with police (i.e. "best practices")?

The consultant determined that there was widespread support for the collection of Aboriginal identity data by police services and a general recognition of the value of such data; that police services, by and large, have the capacity to collect Aboriginal data and that many are already doing so in certain circumstances, and; Aboriginal groups strongly believe that self identification of Aboriginal identity by the individual in question is the most appropriate way of determining

Aboriginal status (LeClair Infocom, 2009). Unfortunately, very few police services in Saskatchewan, or across Canada, are submitting quality Aboriginal data to the CCJS.

At present, police agencies in Alberta are involved in the development and implementation of a provincial records management system that can be utilized to ensure better coordination and access of data amongst Alberta police organizations. Furthermore, a standardized system is being developed within which race is one of the data points.

The arguments for and against the collection of race-based criminal justice statistics

There are a number of agencies and organizations that have publicly stated their support for the collection of race-based criminal justice data. These include community agencies, national advocacy groups and elected officials (African Canadian Legal Clinic, 2009; Kong and Beattie, 2005). While there have been very few public consultations on the issue, two sources of data do provide some evidence of public support for the collection of race-based criminal justice data. A public opinion survey conducted in Toronto in 2007 found that overall, 50.6% of respondents supported race-based data collection by the police, 15.5% believed that data collection could be useful, and 33.9% believed that data should not be collected (Wortley, 2011). Furthermore, support for Aboriginal data collection was revealed in the consultations noted above. As LeClair himself posits, “there was widespread support within the Aboriginal community for collecting Aboriginal identity data by police services. This included support from both Métis and First Nations governments, community organizations, and individuals interviewed” (LeClair Infocom, 2009: 14). The following is a brief explanation of the arguments commonly put forth in favour of the collection of race-based criminal justice data.

Arguments that support the collection of race-based criminal justice statistics

Race-based criminal justice statistics are potentially useful for the development, implementation, and monitoring of criminal justice policy. They would also be useful to ensure that designated groups have access to special services afforded to them within the criminal justice system. For example, statistics showing the relative over-representation of Aboriginal offenders in the justice system was used to justify sentencing reform in Canada. Section 718.2(e) of the *Canadian Criminal Code* now instructs judges to consider “all available sanctions other than imprisonment that are reasonable under the circumstances... with particular attention to the circumstances of Aboriginal offenders.” In corrections, race-based criminal justice statistics enable decision makers to make informed choices about the service and programming needs of the correctional population, as Canada has a number of ethno-culturally specific programs for inmates. Such programs would also allow criminal justice personnel to better focus resources. As Wortley points out, “evidence of large numbers of minority offenders could also be used to justify the hiring of more minority police officers, lawyers, judges, treatment workers, and correctional staff” (1999: 267). The need to discern racial identity is particularly true for Aboriginal Canadians who come into contact with the criminal justice system. Determining Aboriginal identity is important in order to provide timely access to restorative justice programs, victims services, and services including diversion initiatives (particularly youth), as well as to gain access to Aboriginal court-worker programs or First Nations and Métis child and family services. Collecting race-based and Aboriginal data would also help ensure that targeted strategies (such as restorative justice programs) are operating efficiently and effectively.

Race-based criminal justice statistics, it is proposed, would also foster a better understanding of the manner in which the justice system processes members of different groups in our society, and help discern the extent to which discrimination takes place within the system. For example, statistics on the race of individuals stopped by the police in the United States helped minority groups, particularly blacks and Hispanics, prove that they were the targets of racial profiling (Weitzer and Tuch, 2006). Race-based data would also allow us to determine whether criminal justice policies have a differential impact on racial minorities. Again, evidence from the United States shows that the “War on Drugs” targeted African Americans and led to the grossly disproportionate incarceration of African American males (Wortley, 1999). While, this may have been obvious to American inmates and correctional staff, the availability of race-relevant data enabled researchers and advocates to bring this injustice to the attention of the public. Race-based criminal justice statistics can, therefore, provide transparency and accountability.

Finally, race-based criminal justice statistics may be useful to challenge or invalidate biological explanations of crime. Some of the most effective critiques of Phillippe Rushton’s work, known for his theories on race, crime, and intelligence, have employed race-based criminal justice statistics (Wortley, 1994). One such critique of Rushton’s theories has been put forward by Roberts and Gabor (1990), who use race-based criminal justice statistics to illustrate the considerable temporal and cross-cultural differences in crime patterns amongst blacks. They illustrate, amongst other things, that blacks in America have a considerably higher homicide rate than some of their more racially “pure” counterparts in Africa. The authors then go on to demonstrate the impact of environmental factors (over genetic factors) in explaining this difference in homicide rates, which directly contradicts and disproves Rushton’s heavily criticized thesis (Roberts and Gabor, 1990: 75). Researchers have long attributed the high rates of black crime to their deleterious living conditions and their experiences of social inequality. Race-based criminal justice statistics are used to test these explanations and to try and explain how race and crime are connected (Wortley, 1999). Furthermore, the collection of race-based criminal justice statistics could help to dispel negative public perceptions and stereotypical assumptions about minority criminality. The public opinion polls discussed above highlighted the public’s over-attribution of crime to racial minority groups. Racial prejudice is more likely to occur when one group has little accurate information about the other. As Gabor notes, “[public] perceptions that are widely held, but not discussed, do not disappear” (1994: 157). Making race-based criminal justice statistics publicly available may help counter stereotypes and prejudice by showing that media-driven stereotypes are wrong, or at the very least, exaggerated.

Arguments against the collection of race-based criminal justice statistics

Opposition to the collection and dissemination of race-based criminal justice data has come from concerned community agencies, as well as from some police services. For example, the Royal Canadian Mounted Police (RCMP) has a policy which prohibits the reporting or publication of race-based statistics. While the benefits of collecting race-based criminal justice statistics may be clear, there are a number of practical difficulties associated with their collection. The first problem has to do with the accuracy of criminal justice statistics, particularly those collected by the police. It is widely accepted that crime statistics are more indicative of policing practices and the reporting rates of crime victims than they are of the actual level of crime (Hatt, 1994: 164). As Doob articulates, “using police/UCR data to describe ‘crime’ is in most circumstances, naïve, and deceptive” (Doob, 1991: 3). For example, if the police focus most of their surveillance

activities on street crimes in impoverished neighbourhoods, they are more likely to detect and arrest offenders from poor backgrounds (Wortley, 1999: 263). A further criticism of official police statistics is that they only capture crimes that come to the attention of the police. This has led researchers to look towards other methods of data collection, such as self report surveys and victimization surveys (Wortley, 1994: 19).

A second concern relating to the collection of race-based criminal justice statistics is that they will be used to further disadvantage already marginalized populations (Doob, 1991). This was one of the main fears voiced by racial minority groups when the idea of collecting race-based criminal justice data was first proposed. It is argued that if a particular minority group is found to have a disproportionately high offending rate, this may cause social unrest, lead to further stereotyping of that group, and potentially create friction between different racial groups. This is also a concern within academia. For example, Phillippe Rushton, whose hypotheses were mentioned earlier, has used race-based criminal justice statistics to support his biological theories of crime (Wortley, 1994: 26). Another fear is that the police may use the statistics to justify increased policing in minority areas. Essentially the race-based criminal justice statistics may produce a dangerous self-fulfilling prophecy. If blacks, for example, are shown in the statistics to have a higher rate of offending than other racial groups, then police may see this as evidence of black criminality and may use such information to justify heavier levels of policing in black areas. The consequence, of course, would be an increase in black representation in crime statistics. This same logic, equally harmful, could be used to justify exclusionary immigration, education, employment, and housing policies (Wortley, 1994: 25).

A third argument against the collection of race-crime statistics relates to the notion of race itself, and the conceptual difficulties inherent in trying to document or collect statistics on race. There exists a debate amongst social scientists as to whether data on race should be collected at all. It is commonly accepted that “race” is not a biological fact or reality, but rather, a social construct used to categorize individuals based on observable physical traits (Cornell and Hartman, 2004). On one side of the debate, opponents argue that because race has no significance at the biological level, efforts should be made to eliminate it in the social science discourse so as to not to reproduce its societal consequences (Hatt, 1994: 164). The supporting camp, however, argues that although race has no basis in biology, as a social construct its consequences are very real. As such, the concept should be used to document discrimination in social institutions. Support for this position is provided by the American Sociological Association:

Sociological scholarship on “race” provides scientific evidence in the current scientific and civic debate over the social consequences of the existing categorizations and perceptions of race; allows scholars to document how race shapes social ranking, access to resources, and life experiences; and advances understanding of this important dimension of social life, which in turn advances social justice. Refusing to acknowledge the fact of racial classification, feelings and actions, and refusing to measure their consequences will not eliminate racial inequalities. At best, it will preserve the status quo... The continuation of the collection and scholarly analysis of racial data serves both science and the public interest (American Sociological Association, 2003: 1).

The American Sociological Association has recommended that the collection and analysis of racial data continue.

Finally, criminal justice officials, and police officers in particular, have voiced their concern that race-based data collection could be detrimental to the justice system and could lead to allegations of racial discrimination. As LeClair found in his consultations with police officers in Saskatchewan, “[s]ome police personnel suggested that the collection of the data might lead to charges that the police are ‘profiling’ Aboriginal people” (LeClair Infocom, 2009:22). However, while some police officers in LeClair’s consultations opposed data collection, he reports that there was “near universal support from police services... for the need to collect Aboriginal identity data” (Ibid at 13). Related to this fear amongst police surrounding accusations of racism is another apprehension—i.e., that mandatory racial data collection could lead to de-policing if officers become reluctant to stop or question racialized individuals for fear that they will be accused of acting in a discriminatory manner. De-policing could also lead to increased levels of fear amongst the public if officers become overly-cautious about apprehending legitimate criminals. There is also concern about officer safety in asking an individual about their racial background during an encounter. Some police representatives recognize that police-public encounters can become quite heated and asking for an individual’s race may only exacerbate or intensify an already delicate situation, putting the safety of both officers and accused in jeopardy.

Methodological concerns:

There are two further methodological concerns related to the collection of race-based criminal justice statistics, particularly within the policing sector. First of all, it is argued that even if the decision is made to collect statistics on race, there are great difficulties inherent in assigning people to specific racial categories (Roberts, 1994: 179). This issue has garnered a great deal of attention from academics and has been a concern in relation to Aboriginal identity data collection in the policing sector. There are three strategies which could be utilized to identify the race of an individual: self identification; expert identification; and stakeholder identification. The self-identification method is self-explanatory, the individual in question is asked to identify their own racial background. Ideally the respondent would choose from a list of predetermined responses that correspond with Census classifications. One problem with this method is that it makes the system vulnerable to intentional misclassification by groups attempting to attribute their crime onto others or out of fear that their identification in a particular racial group could lead to subsequent discrimination (Doob, 1991: 21; Kong and Beattie, 2005). In the second method, expert identification, outside experts would be used to assess the racial characteristics of the population at hand. While this method may be less vulnerable to manipulation, it is likely to be quite costly and is not very practical. In the stakeholder method, police and other justice officials are responsible for identifying the racial background of the individual in question. Under this strategy, the stakeholders would be provided with training on racial classification and given distinct categories to choose from. Stakeholders would then be instructed to record the race of an individual, as they perceive it to be. An interesting approach to this problem was taken in the British context where Census categories were collapsed into several broader categories so as to make it easier for police officers to carry out this function. However, this method suffers from a similar flaw as the self-identification method; it is vulnerable to misclassification, both mistakenly and purposefully. It has also been suggested that some Aboriginal groups would

prefer to self-report their Aboriginal status rather than have a police officer or other justice official try to determine this for them. If police officers are mandated to ask individuals about their racial background, posing this question to everybody (i.e., members of all racial groups) would help make the activity common practice and may reduce allegations of racism or racial profiling.

Determining an appropriate benchmark or standard from which to compare the data that is collected is the second major methodological concern—one which has been heavily debated in the racial profiling literature (see Melchers, 2006). In the context of driving stops, for example, one would need to determine what the right percentage of drivers stopped ought to be before one could determine whether the stop rate for a certain racial group is too high, too low, or about right. The most common forms of benchmarking discussed in the literature are referred to as aggregate benchmarking, which involve comparisons (often of traffic stop data) to a benchmark based on the demographics or offending characteristics of a population in a given area. Four types of aggregate benchmarking are commonly discussed: census benchmarking; observational benchmarking; behavioural benchmarking; and neighbourhood benchmarking (Wortley, 2011). Each one of the above methods is deemed to have inherent flaws. Census benchmarking is often seen as inappropriate both for comparisons of stop and search, and of offence data. The biggest criticisms of census benchmarking is that comparisons of the race of those captured in stop data to the race of census populations disregards transient populations and assumes offending behaviour is equally distributed throughout the population. The latter three forms of benchmarking suffer from two similar flaws—i.e., that the benchmark, so critics argue, is only valid for the particular time and place within which it was taken. These methods can also become quite costly.

Another form of benchmarking is known as internal benchmarking. In this method, individual officers' stop, search, and/or arrest statistics are compared with those of other officers within the same unit or who perform a similar function in order to uncover any latent disparities or discrimination. Again, this method has its weaknesses as well, as it assumes that conditions in the external environment remain constant. However, if envisioned more broadly, this method could be particularly useful in determining whether new tactics, initiatives, or policies are affecting one racial group more than another. In this sense, comparisons over time could be made at the individual officer, unit, division, or force level, however appropriate controls would need to be added. A recent illustrative example of this method was documented in a report by the Service de police de la Ville de Montréal (SPVM). A time series analysis of the identity checks conducted by the SPVM showed substantial increase in the number of checks in the period leading up to the shooting of Freddy Villeneuve in 2008 and the riot that followed the shooting. The results of the time series analysis led the SPVM researcher to conclude that the riot was foreseeable, given the rise in checks and that a diffuse and growing sense of arbitrary police practices towards minority groups (blacks in particular) is likely to have fuelled the uprising (Charest, 2009; Charest, 2010).

The benchmarking issue is perceived by some as an obstacle too great to be overcome. However, evidence from the criminal justice systems in United States, Great Britain, Australia, and New Zealand suggests that this does not have to be the case (Kong and Beattie, 2005). Despite their individual weaknesses, each jurisdiction collects racial data within their criminal justice systems.

Legal and privacy issues

A further obstacle to the collection of race-based criminal justice data is the concern held amongst some police services that the collection of this data and subsequent reporting of it to the CCJS would violate federal, provincial, or territorial privacy legislation. In 2003, as part of ongoing efforts to collect Aboriginal identity data, the CCJS recommended that the Department of Justice and its provincial counterparts commission legal opinions to determine whether the collection and reporting of racial or Aboriginal data was in violation of privacy legislation. It was determined that:

The legal positions provided confirm that, in those jurisdictions that responded, privacy or freedom of information legislation do not expressly forbid police from collecting information on Aboriginal identity, nor do the legislation forbid the reporting of these data to Statistics Canada for national research purposes. It should be noted, however, that concerns remain among some police services, including the Royal Canadian Mounted Police, regarding the use of data in their current state for national statistical purposes (Kong and Beattie, 2005: 14).

The Department of Justice Canada confirmed that the legal opinions provided relate not only to Aboriginal identity data but to race-based data more broadly. Although legal authority to collect Aboriginal identity data has been confirmed, some police forces, such as the RCMP refuse to report this information to the CCJS for both the Homicide Survey and the Incident-based Uniform Reporting Survey (Kong and Beattie, 2005: 14). In June of 2009, the RCMP Headquarters re-affirmed its position not to send Aboriginal identity data to the CCJS based on their official policy not to collect any race or ethnicity based data (Bias-Free Policing policy). As this data was integral to the Saskatchewan data collection project mentioned above, a request for the RCMP to reconsider its position was made in August 2009 by Justice and Public Safety officials. The RCMP has subsequently indicated that its position will not change. As the RCMP has jurisdiction over areas with high Aboriginal populations, such as northern communities and rural and reserve areas in the prairie and western provinces, its refusal to provide this data presents a considerable challenge to the quality and utility of Aboriginal data in Canada (Kong and Beattie, 2005: 12-13).

Current practices

Information on individual alleged offenders and victims processed by the criminal justice system, including descriptions of Aboriginal status and racial background, is routinely documented and collected from the records of criminal justice agencies (for example within the policing and correctional sectors). In general, the further an individual is processed through the criminal justice system, the more information is recorded about that individual. However, because this information is collected to meet the disparate operational needs of the agencies involved, the data often lacks the consistency deemed necessary for national comparative purposes.

Police services, for example, have the ability to collect Aboriginal and racial data, and many are in fact currently recording such data in certain circumstances. Police services that do collect racial information typically do so for two reasons. The first is for intelligence gathering purposes, while the second is when racial information is relevant to a criminal investigation. For instance, several large police services that responded to requests for information for this report indicated that their police officers may record personal information about individuals whom they come into contact with or observe while carrying out their duties. This type of intelligence gathering does not occur after every police stop; in fact, a stop or encounter need not take place, as a police officer could record information based on observations of individuals or groups of people. “Contact cards”, as they are known by the Toronto Police Service and their equivalents elsewhere, usually contain various pieces of information such as home address and reason for the stop. The cards also include basic demographic and descriptive information including age, gender, and the police officer’s perception of the civilian’s racial background. The police argue that this information helps them to keep track of who is present on the streets at certain times and locations and that this information may help them identify potential crime suspects and victims (Wortley and Owusu-Bempah, 2011). This type of information gathering is currently carried out by a number of large Canadian police services including:

- The Toronto Police Service (208’s or “Contact Cards”)
- The Ottawa Police Service (“Street Level Checks”)
- The Edmonton Police Service (“Street Information Reports”)
- The Service de police de la Ville de Montréal [SPVM] (“Control Checks”)

Racial descriptors of accused persons, victims, and, in some instances, witnesses, are often collected by police services where relevant to a criminal investigation. In cases of hate crime, for example, the racial background of the victim and the possible suspect is documented where the crime is viewed as racially motivated. This information is usually collected through police interviews with complainants, witnesses, victims, and accused persons. The information is first manually recorded in police note pads and some of the data are then subsequently entered into police databases, either by front-line officers or administrative personnel (LeClair Infocom, 2009: 18)

In terms of police reported data, both the Incident-based Uniform Crime Reporting (UCR-2) Survey and the Homicide Survey utilized by police services collect detailed information on the social characteristics of victims and persons charged. An Aboriginal indicator is included in the UCR-2 and the Homicide Survey, but no other racial information is collected; the response category for Aboriginal identity could be expanded to include other racial categories. The UCR-2 and Homicide Survey draw upon data that currently exists within police records. However, as indicated above, some police services, such as the RCMP, have official policies restricting the reporting or publication of race-based data and thus do not send even basic Aboriginal data to the CCJS⁸. The following is a list of police services, from east to west, that, as of 2009, were providing what appeared to be quality data for the UCR-2 Aboriginal variable:

⁸ In November 2010, the Toronto Police Service Board amended its policy restricting the publication of race-based statistics by the Toronto Police Service. The new policy states: “the Toronto Police Service will be permitted to collect, use and report statistics related to the grounds prohibited under the Ontario Human Rights Code, i.e., race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family

- Fredericton
- Ottawa
- London
- Prince Albert
- Moose Jaw
- Medicine Hat
- Calgary
- Vancouver

Poor data quality has been cited by police services as a reason not to collect or report Aboriginal data to the CCJS. As LeClair points out:

POLIS⁹ has recommended that the [Aboriginal] variable be removed from police-reported surveys. The RCMP national headquarters has also declined to provide identity data since 2001. Both have cited poor data quality as a reason for withholding support for the continued collection of data on the Aboriginal identity variable. It is a situation where past and current conduct is reinforcing the argument and position for not collecting the data. (LeClair Infocom, 2009: 20).

There are several other sources of criminal justice data that either currently collect Aboriginal identity and racial information, or have the potential to do so in the future. The Integrated Criminal Court Survey, for example, collects statistical information on cases that involve charges under the *Criminal Code of Canada* and other federal statutes processed through the adult and youth criminal court systems. “Aboriginal Identity” is one of the data elements in the Integrated Criminal Court Survey, and response categories include: Aboriginal, Non-Aboriginal, and Unknown/Not Stated (Kong and Beattie, 2005: 15). Unfortunately, courts in the vast majority of jurisdictions do not currently collect Aboriginal data because this information is not deemed necessary for the purposes of court administration (Kong and Beattie, 2005: 15). The Integrated Criminal Court Survey does not have the capacity to capture racial information beyond Aboriginal Identity, but the current response category could be expanded to do so in the future.

The Integrated Correctional Services Survey collects information on adults and youth who enter the correctional system for all provinces and territories in Canada. The Integrated Correctional Services Survey captures individual and case characteristics that allow for the analysis of specific concerns related to the correctional sector, such as individual case histories and re-involvement with the correctional system (Kong and Beattie, 2005: 16). Aboriginal identity and racial background is self-reported by individuals upon intake into the correctional system. The quality of this data has historically been quite high in comparison to other sectors of the criminal

status or disability, as necessary and appropriate”. It remains to be seen whether the change in policy will be reflected in a change in the practice of reporting such data.

⁹POLIS is the Police Information and Statistics Committee of the Canadian Association of the Chiefs of Police (CACCP), whose mandate is to ensure the reporting of quality data to Statistics Canada through the Uniform Crime Reporting Survey.

justice system and is used to facilitate the delivery of programming to a diverse correctional population. Although this information is collected in a relatively consistent manner, very little is made available to the public. The exception is a one day “snapshot” produced by Public Safety Canada, which captures the race of offenders under federal supervision at one specific point during the year (Public Safety Canada, 2009). This “snapshot” is limited, however, in that it does not provide any information about regional differences in the racial composition of the offender population, racial differences in sentence length, etc.

In sum, race-based data is collected by a variety of criminal justice institutions, yet national reporting of race and Aboriginal data is sparse and inconsistent, especially when looking beyond the Aboriginal category. Racial data on victimization is currently available, and the categories used are consistent with the Census. No data is systematically available for any stage of the prosecution process, despite the introduction of an Aboriginal variable into the Integrated Criminal Court Survey. The correctional sector systematically collects racial and Aboriginal identity information upon prisoner intake; however, very little is made available to the general public.

Conclusions and recommendations

The need for adequate data on the racial background of those who come into contact with the criminal justice system has been firmly established. There currently exists a variety of data that could be useful for examining disparities in criminal justice processing and for the development and monitoring of criminal justice policy and social policy more generally; where data is not currently collected, the potential to do so in the future certainly does exist¹⁰. However, apprehension surrounding the collection and dissemination of race-based criminal justice statistics remains, particularly in the policing sector. Although some of this concern is based on recognition of very real practical and financial obstacles inherent in the implementation of systematic data collection, a large part of the concern arises from the current focus on analysing police stop and search practices (often in the context of discussions about racial profiling) and the difficulties associated with collecting this type of data. While it is acknowledged that police stop and search practices are very important, as they influence who enters the criminal justice system, there are other areas of policing and criminal justice that could largely benefit from race-based data collection.

It may be prudent at this juncture to shift attention from stop and search to arrests and disposals, using the post-arrest population as the basis for comparison rather than the population at large (or another external benchmark). As pointed out by Fitzgerald and Sibbit, when the relevant population is taken to be those who have been arrested by the police, variables relevant to exploring racial disparities in criminal justice processing are readily available from the records of the criminal justice agencies involved (1997: 93). This would include information relevant to the present offence, as well as previous criminal history and a host of personal and demographic variables captured in criminal justice databases. Analysing existing data would be less expensive than establishing new data collection mechanisms, while yielding the valuable information necessary for the monitoring of criminal justice practice and policy. This approach would also be

¹⁰It would also be possible to link police-reported and courts data to corrections records, thus making the information more useful and reliable (Kong and Beattie, 2005: 10).

less vulnerable to some of the problems associated with previous attempts to collect race-based data in the Canadian context.

Within the policing sector, this approach could involve examining the racial differences in the proportion of arrested individuals against whom no further action is taken, those who are referred to extra-judicial measures (in the case of youth), the crime that an individual is charged with, and whether these charges are ultimately substantiated. Examining police discretion in this manner may be particularly important with regards to youth, as the *Youth Criminal Justice Act* recognizes the value of diverting young people away from the official criminal justice system. It would be useful to know whether there are racial differences in youth who benefit from this directive. Similarly, race-based data would be useful in analysing court decision-making and examining the impact of relevant policy. Research documented above shows racial differences in bail decisions, which are known to impact upon subsequent treatment in court (Kellough and Wortley, 2002). Information on racial differences in findings of guilt and sentencing decisions could be of great value to policy makers and researchers examining the operation of the criminal court system. Similarly, Kong and Beattie (2005) argue that data on the Aboriginal identity of individuals appearing in court would provide a means of evaluating the effectiveness of section 718.2 (e) of the *Criminal Code*¹¹ (16). Finally, it has been shown that race-based data collection systems are well established within the correctional system and are currently used to inform a range of service delivery and policy needs. Detailed information gathered by the correctional sector, however, would also be useful to those working outside the criminal justice system to inform broader social policy and research needs.

If viewed in this way, the real value of race-based data would be in its potential to identify areas of possible concern, such as the impact of policies and routine activities which are not intentionally discriminatory, but may negatively impact certain groups (Fitzgerald and Sibbit, 1997: iii). Statistical data alone is not sufficient provide explanations for why certain racial groups are over-represented in criminal justice system, nor can they tell us the extent to which racial discrimination exists within the system. Statistical data would, however, provide us with a more informed position from which to further explore these two phenomena. Furthermore, the collection and monitoring of race-relevant data could help criminal justice agencies, particularly the police, in balancing their investment in developing and maintaining good community relations with other service priorities (Fitzgerald and Sibbit, 1997: 99). The process of racial data collection will itself be of benefit as criminal justice actors become more aware of their own decision making and develop a better understanding of how they exercise their powers. The process is also likely to be viewed by the public as evidence of increased accountability and transparency on the part of the agencies involved. Finally, race-based data could also serve as the basis for dialogue between the criminal justice system and outside agencies and individuals who have a mutual interest in understanding and addressing racial disparities in the administration of criminal justice.

¹¹ Section 718.2 (e) of the *Criminal Code* instructs judges to consider all available sanctions other than imprisonment that are reasonable under the circumstances... with particular attention to the circumstances of Aboriginal offenders.

Recommendations

- Public Safety Canada and relevant criminal justice agencies continue to assess the feasibility of collecting race-based data throughout the justice system.
- Where race-based data is currently available, efforts should be made to utilize the information to monitor service delivery and the impact of policy. This information should also be made readily available in aggregate form to the general public, particularly to academic and other researchers for analysis and publication.
- In recognition of the potential for additional financial costs, police services and other criminal justice agencies should consider forming partnerships with community organizations and academics to share the responsibility for data collection and analysis.
- Criminal justice agencies who are considering, or in the process of, collecting racial data should utilize response categories that are consistent with the Census.
- Criminal justice agencies, particularly police services, that are considering, or are in the process of, collecting race-based data should pursue outreach engagement approaches and communication strategies to inform the public of how the data can be used to facilitate fair and effective service delivery.
- Police personnel and other criminal justice actors should be trained on the practical benefits of race-based data collection and appropriate data collection methods, in addition to the “race-relations” or “cultural sensitivity” training currently provided.
- Efforts should be made to link police, courts, and correctional data as part of the ongoing modernization of criminal justice records management systems.

References

- African Canadian Legal Clinic. (2009). *Disaggregated Data Collection (Race Based Statistics): Policy Paper*. Toronto: African Canadian Legal Clinic.
- American Sociological Association. (2003). *The Importance of Collecting Data and Doing Scientific Research on Race*. Washington DC: American Sociological Association.
- Canada. (1996). *Report of the Royal Commission on Aboriginal Peoples, vol. 5, Renewal: A Twenty Year Commitment. Chapter 4: Building Awareness and Understanding*. Ottawa: The Royal Commission on Aboriginal Peoples.
- Charest, M. (2009). Mécontentement populaire et pratiques d'interpellations du SPVM depuis 2005: Doit-on garder le cap après la tempête?. SPVM. Available at: http://www.spvm.qc.ca/upload/documentations/Mecontentement_populaire_et_pratiques_dinterpellations.pdf. Accessed March 18, 2011.
- Charest, M. (2010). Mécontentement populaire et pratiques d'interpellation du SPVM depuis 2005 : doit-on garder le cap après la tempête?. Available at: http://www.spvm.qc.ca/upload/documentations/Mecontentement_populaire_mise_a_jour_2008.pdf. Accessed March 18, 2011.
- Chui, T., Tran, K., & Maheux, H. (2008). *Canada's ethnocultural mosaic: The 2006 Census*. Ottawa: Statistics Canada. Catalogue no. 97-562-X.
- Commission on Systemic Racism in the Ontario Criminal Justice System. (1995). *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. Toronto: Queen's Printer for Ontario.
- Cornell, S. & Hartman, D. (2004). Conceptual Confusions and Divides: Race, Ethnicity, and the Study of Immigration. In: N. Foner and G.M. Frederickson. *Not Just Black and White* (pp. 23–41). New York: Russell Sage Foundation.
- Correctional Service of Canada. (CSC). Statistics relating to the racial background of the Canadian federal offender population (1992 – 2009); obtained through ATI request no. A-2010-00272 to CSC.
- Department of Justice. (2009). *Family Violence: Department of Justice Canada Overview Paper*. Web. 1 Sep 2010. <http://www.justice.gc.ca/eng/pi/fv-vf/facts-info/fv-vf/index.html>.
- Doob, A. N. (1991). *Workshop on Collecting Race and Ethnicity Statistics in the Criminal Justice System*. Toronto: Centre of Criminology.
- Fine, S. (1990, July 31). *StatsCan Dropping Scheme to tie Crime Statistics to Ethnic Groups*. Globe and Mail.

- FitzGerald, M., & Sibbit, R. (1997). *Ethnic monitoring in police forces: A beginning*. Home Office Research Study No. 173. England: Home Office.
- Gabor, T. (2004). Inflammatory rhetoric on racial profiling can undermine police services. *Canadian Journal of Criminology and Criminal Justice* 46(4), 457-466.
- Gabor, T. (1994). The Suppression of Crime Statistics on Race and Ethnicity - The Price of Political Correctness. *Canadian Journal of Criminology*, 36(2), 153-163.
- Gold, A.D. (2003). Media Hype, Racial Profiling, and Good Science. *Canadian Journal of Criminology and Criminal Justice* 45, 393-399.
- Hatt, K. (1994). Reservations about race and crime statistics. *Canadian Journal of Criminology*, 36(2), 164-165.
- Henry, F., Hastings, P. & Freer, B. (1996). Perceptions of Race and Crime in Ontario: Empirical Evidence from Toronto and the Durham Region. *Canadian Journal of Criminology*, 38, 469-76.
- Henry, F., & Tator, C. (2005). *The Colour of Democracy: Racism in Canadian Society* (3rd ed.). Toronto: Nelson.
- James, R. (2005, April 8). New chief, new hope Blair offers an honest take. *The Toronto Star*, p. B01.
- Johnston, J. P. (1994). Academic approaches to race-crime statistics do not justify their collection. *Canadian Journal of Criminology*, 36(2), 166-174.
- Kellough, G., & Wortley, S. (2002). Remand for Plea. Bail decisions and Plea Bargaining as Commensurate Decisions. *British Journal of Criminology*, 42(1), 186-210.
- Kong, R. & Beattie, K. (2005). *Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges*. Ottawa: Canadian Centre for Justice Statistics. (Catalogue no. 85-564-XIE)
- LeClair InfoCom. (2009). *The Collection of Aboriginal Identity Data by Police in Saskatchewan*. A report submitted to the Canadian Centre for Justice Statistics.
- Manitoba. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba, vol.1, The Justice System and Aboriginal People*. Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People.
- McKinnon v. Ontario (Correctional Services), 2011 HRTO 591 (CanLII).
- Melchers, R. (2006). *Inequality before the Law: The Canadian Experience of Racial Profiling*. Ottawa, ON: Royal Canadian Mounted Police.

- Ontario Human Rights Commission. (2003). *Paying the price: The Human Cost of Racial Profiling Report*. Toronto: Ontario Human Rights Commission.
- Owusu-Bempah, A., & Millar, P. (2010). Research note: Revisiting the collection of “justice statistics by race” in Canada. *Canadian Journal of Law and Society*, 25(1), 97-104.
- Pieters v. Peel Law Association, [2010] HRTO 2411.
- Public Safety Canada. (2009). *Corrections and Conditional Release Statistical Overview: 2008*. Ottawa: Public Works and Government Services Canada.
- R. v. Huang, [2010] B.C.J. No. 2627 (P.C.).
- Rankin, J. (2010a, February 6). Race matters: When good people are swept up with the bad. *The Toronto Star*, p. A1.
- Rankin, J. (2010b, February 6). CARDED: Probing a racial disparity. *The Toronto Star*, p. IN1.
- Rankin, J., & Powell, B. (2008, July 21). The criminals among us: Not as many lawbreakers as Canadians believe are members of visible minorities, survey shows. *The Toronto Star*, p. A01.
- Rankin, J., Quinn, J., Shephard, M., Simmie, S., & Duncanson, J. (2002a, October 19). Singled out: An investigation into race and crime. *The Toronto Star*, p. A1.
- Rankin, J., Quinn, J., Shephard, M., Simmie, S., & Duncanson, J. (2002b, October 20). Police target black drivers. *The Toronto Star*, p. A1.
- Roberts, J.V. (1992). *Statistics on Race and Crime: A Canadian Dilemma*. Ottawa: University of Ottawa.
- Roberts, J. V. (1994). Crime and Race Statistics - Toward a Canadian Solution. *Canadian Journal of Criminology*, 36(2), 175-185.
- Roberts, J.V. (2001). *Race, Crime and the Collection of Criminal Justice Statistics*. In Chan, W. & Mirchandi, K. Eds. *Crimes of Colour. Racialization and the Criminal Justice System*. Peterborough: Broadview Press.
- Roberts, J.V., & Doob, A. (1997). *Race, Ethnicity, and Criminal Justice in Canada*. In Tonry, M. (Eds.), *Ethnicity, Crime and Immigration: Comparative and Cross-National Perspectives*, Chicago: University of Chicago Press.
- Roberts, J.V. & Gabor, T. (1990). Lombrosian Wine in a New Bottle: Research on Crime and Race. *Canadian Journal of Criminology*. 32, 291-313.

- Statistics Canada. (2010). *Youth Court Survey (YCS)*. Available at: <http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3309&lang=en&db=imdb&adm=8&dis=2#a1>. Accessed April 27, 2011.
- Tanovich, D. M. (2006). *The Colour of Justice: Policing Race in Canada*. Toronto, ON: Irwin Law.
- Tator, C., & Henry, F. (2006). *Racial Profiling in Canada: Challenging the Myth of "a few bad apples"*. Toronto: University of Toronto Press.
- The Toronto Star. (2010). *Toronto Star Analysis of Toronto Police Service Data – 2010 Advanced Findings*. Available online: <http://media.thestar.topscms.com/acrobat/dd/49/f22a053a43cd98df18c4650f56d7.pdf>. Accessed March 15, 2010.
- Tonry, M. (1995). *Malign Neglect: Race, Crime and Punishment in America*. New York: Oxford University Press.
- Toronto (City) Police Service v. Phipps (2010), 325 D.L.R. (4th) 701 (Ont. Div. Ct.)
- Weitzer, R. and Tuch S. (2006). *Race and policing in America: Conflict and reform*. New York: Cambridge University Press.
- Wortley, S. (1999). A Northern taboo: Research on race, crime, and criminal justice in Canada. *Canadian Journal of Criminology*, 41(2) 261-271.
- Wortley, S. (1996). Justice for all? Race and perceptions of bias in the Ontario criminal justice system: A Toronto survey. *Canadian Journal of Criminology*, 38, 439-467.
- Wortley, S. (2011, March). Racially Biased Policing: Data Collection Issues. Paper presented at the 2011 Law Enforcement Accountability Project – Accessing Justice in Policing Conference. University of Windsor.
- Wortley, S. (2006). *The Collection of Race-Based Statistics within the Criminal Justice and Educational Systems: A Report for the Ontario Human Rights Commission*. Toronto: Ontario Human Rights Commission.
- Wortley, S. (1994). *The Collection and Use of Statistics on Race and Crime: an Issues and Options Paper*. Toronto: The Commission on Systemic Racism in the Ontario Criminal Justice System.
- Wortley, S. & Marshall, L. (2005). *Police Stops in Kingston, Ontario: Results from a Pilot Project*. Kingston, ON: Kingston Police Services Board.

- Wortley, S., & McCalla, A. (2003). *Bias against black people in the Canadian Criminal Justice System*. In J. V. Roberts (Ed.), *Criminal Justice in Canada* (2nd ed., pp. 212-228). Toronto: Harcourt Brace.
- Wortley, S., & Owusu-Bempah, A. (2009). Unequal before the law: Immigrant and racial minority perceptions of the Canadian criminal justice system. *Journal of International Migration and Integration*, 10(4), 447–473.
- Wortley, S., & Owusu-Bempah, A. (2011). Crime and Justice: The Experiences of Black Canadians. In B. Perry (Eds.) *Diversity, crime, and justice in Canada* (pp.125-148). Oxford University Press.