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## **Systemic Racism in Law Enforcement:**

### **How are the enforcers being enforced?**

**By: Eila De Almeida**

Prime Minister Justin Trudeau stated: “Systemic racism is an issue right across the country, in all our institutions, including in all our police forces, including in the [Royal Canadian Mounted Police (RCMP)]. That's what systemic racism is” (Tunney, 2020), when he was asked about comments an RCMP commissioner Brenda Lucki made. Lucki said that she is “struggling with the term and denied racism’s presence within the organization” (Tunney, 2020). There is a subset of communities in Canada, who distrust the police for a host of reasons. Black and Indigenous People of Colour (BIPOC) Canadians are those with the lowest level of trust towards Canadian policing (Gillis, 2019). Results on a survey conducted by the civilian police board revealed that while 72 per cent of Caucasian respondents said police were honest, only 41 per cent and just over half of Indigenous people agreed (Gillis, 2019).

I argue that revisions need to be undertaken regarding accountability procedures within Canada’s law enforcement. The main revisions suggested are to provide third-party oversight with the power to impose disciplinary actions and to equip all front-line law enforcement personnel with BWCs. This paper first considers the origin of Canadian law enforcement, then discusses internal accountability procedures (Stelkia, 2020a), third-party oversight (Stelkia, 2020a, Westmarland & Conway, 2020), and closes with an analysis of body-worn cameras (BWC’s) (Glasbeek et al., 2020).

### **Literature Review**

This review of literature is organized chronologically and focuses on BWCs (Glasbeek et al., 2020) and then examines third-party oversight organizations (Stelkia, 2020a).

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Glasbeek et al (2020) explored the topic of BWCs in Canada and the politics around the implementation of such technology. They drew from interview data collected from four Canadian police services and analyzed the work of anti-racist and anti-colonial scholars. They argued that BWCs challenge what has historically been an act of not seeing the violence that makes racialized communities vulnerable to police brutality and recognizes that this form of increased visibility of police officers has promising potential.

Krista Stelkia (2020a) conducted a study aimed at examining the benefits and challenges of the oversight systems for the Royal Canadian Mounted Police (RCMP) and municipal police in British Columbia, Canada. Stelkia's findings revealed that despite having one of the most progressive oversight models in Canada, the system faces major challenges such as slow processing of complaints, the administrative burden of minor complaints, the difficulty in determining return on investment, and the two-tier complaint model. Her results also revealed that a majority of the respondents, except RCMP officers who were interviewed, expressed their belief that the RCMP model of oversight was ineffective and insufficient.

### **Origin of Canadian Law Enforcement**

Canadian police were established in the 1830s and were largely modelled after the French and British policing system: "They aided really largely in Canadian nation-building. They were important in developing what Canada sees as its national fabric, which is founded on whiteness" said Camisha Sibblis, an assistant professor in the school of social work at the University of Windsor whose research focuses on anti-Black racism (Bowden, 2020). Policing in Canada was shaped by the ongoing European takeover of Indigenous territories, the enslavement of Africans and extended itself to the control of immigration of certain ethnic groups, such as Chinese and Indian immigrants (Hawthorn, 2020). Some argue that the current overrepresentation of BIPOC

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in police use of force is indicative of racism and discrimination still being deeply ingrained within Canada's law enforcement: "Even today, the police will always look at Indigenous people and Black folks in our territories as potentially requiring some kind of suppression," (para. 12) said Brooks Arcand-Paul, a Cree lawyer and executive on the Indigenous Bar Association (Cecco, 2020).

### **Internal Accountability Procedures**

Inefficient and ineffective accountability efforts such as complaint processes that the public finds confusing and disciplinary actions that are too lenient result in problem officers who abuse their powers not being reprimanded or terminated. Stelkia's (2020a) findings revealed that 69 per cent of interviewees identified the separate complaint systems that exist between the RCMP and municipal police as one of the greatest challenges facing police accountability. Having law enforcement fall under separate systems was described as being confusing for members of the public trying to address their concerns about officer's conduct: "It's overly complicated first of all. I struggle myself sometimes to understand how the system is working and you know I'm a trained lawyer who has been working in this field for years", said one of the participants in her study (Stelkia, 2020a).

Criticisms that police officers face inadequate disciplinary repercussions as a result of misconduct is an assertion that is neither new nor unfounded. A CBC News investigation found that criminal charges were laid against 18 police officers involved in fatal encounters since 2000, with only two charges ending in convictions: "It's shocking when you look at the numbers. In my opinion, in many cases where there'd be a real possibility of a conviction, they're not even charged" said Peter Rosenthal, a Toronto-based lawyer who has represented families of victims of police shootings (Annable & Kubinec, 2018). Research shows that 461 people have died due

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to encounters with police over 18 years and that BIPOC is profusely overrepresented in that number (Annable & Kubinec, 2018). Between 2007 and 2017, Indigenous peoples represented one-third of people fatally shot by RCMP police officers (Stelkia, 2020b).

Additionally, The Ontario Human Rights Commission found that a Black person was more than 20 times more likely to be shot and killed by the police compared to a Caucasian person: “Gathering evidence always proved difficult because officers are often reluctant to betray a fellow officer” says defence attorney James Lowry, a retired Toronto police officer of 33 years who worked in internal affairs investigating corruption within police ranks (Annable & Kubinec, 2018). Lowry attributes this difficulty as being the result of the, “blue wall of silence” and explains: "It is the idea that you don't want to place a fellow officer not only in harm's way but in harm's way from an investigation" (Annable & Kubinec, 2018). The complaint system that is confusing for the public to utilize and a pattern of delivering lenient disciplinary actions for problem police officers render internal accountability efforts ineffective and inefficient.

### **Third-Party Oversight**

Challenges faced by third-party oversight organizations, such as lengthy processing time of complaints, police resistance to oversight procedures, and oversight organizations' lack of actionable power, reduce the effectiveness of the oversight organizations ability to hold problem officers accountable for their actions.

Third-party oversight was instilled out of a need for change in the handling of complaints against Canadian law enforcement regarding police-minority relations, lack of transparency, and ineffective measures to control police misconduct:

At least a decade of hostile, even volatile, police-community relations. These issues were compounded by findings of procedural irregularities and criminal wrongdoing within several Canadian police forces, including the Royal Canadian Mounted Police and the Metropolitan

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Toronto Police Force. In each instance, the completely internal handling of complaints against police, and the lack of transparency in the process were identified as significant barriers to police accountability and legitimacy to the public. (Prenzler & Hayer, 2015, p. 183)

While oversight workers investigate and resolve the majority of public complaints within the legislated time frame established by law, cases can be extended for longer periods due to various administrative or legal processes (Hope, 2020). One factor contributing to the length of time to resolve a complaint includes the unwillingness of police to provide oversight organizations with required documents or to provide documents in a timely fashion. A police oversight agency representative said: “One of the challenges dealing with the RCMP is always getting documents. It is almost daily we have a challenge getting information from the RCMP” (Stelkia, 2020a).

A secondary factor includes the prioritization of severe cases that can lead to discipline over other cases that can be investigated outside of the one-year time frame. A police oversight agency representative expresses his/her disbelief in the length of time it takes to formally resolve complaints against officers:

The timeliness is outrageous. There is an officer who just received a 4-day suspension for pushing down a woman and someone mentioned to me, and I still almost can't believe it, they said it happened 4 years ago, and I thought it had happened like last year...I just cannot figure out how a push to the ground that is on videotape can take 4 years to resolve. That's crazy and the fact that nobody is saying it's crazy is every crazier . . . The only thing consistent about it is how inconsistent it is. (Stelkia, 2020a)

Lengthy complaint processing diminishes the effectiveness of changing a police officer's behaviour when disciplinary measures for misconduct are imposed months or years after the actions take place.

Police officers' resistance to oversight procedures stems from negative attitudes towards third-party oversight and manifests itself as an unwillingness to report their colleagues. Stelkia's (2020a) police interviews revealed a common theme amongst police officers who voiced their

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concerns about being overseen by civilians who had no background in policing. Police officers expressed disbelief that civilians could understand the types of scenarios, risks, and split-second decisions required in the field. The aforementioned, “blue wall of silence” is applicable in showcasing one perspective concerning why police officers would have an unwillingness to report their colleagues (Annable & Kubinec, 2018).

Additionally, Westmarland and Conway (2020) findings revealed that despite 74 per cent of officers who participated in the survey stating that they were likely to report their colleague if they witnessed them using excessive force that they categorized as being ‘very serious’, many did not trust the anonymous reporting system used by their police force. This distrust impacts their ultimate decision to report the misconduct of a colleague.

**Table One: Survey Response to the Question “How confident are you in the force’s current anonymous messenger system?” (Westmarland & Conway, 2020).**

**Table 16.** Confidence in anonymous messenger system.

	Confidence in anonymous messenger system						Average
	1 (Not confident)	2	3	4	5 (Highly confident)	Blank	
Confidence (%)	16.50	14.12	27.37	18.16	18.29	5.57	3.08

The majority of third-party oversight organizations lack the authority to directly discipline police officers and/or modify policing policies. Most can only recommend discipline for the misconduct of individual police officers, suggest changes to policies, arrange for mediation, recommend improvements in training procedures and assist the police service to develop or operate an early warning system for identifying problem officers (Hope, 2020).

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Stelkia (2020a) details that third-party oversight plays a crucial role in upholding accountability of the police as: “Police investigating allegations of misconduct against other police is biased, unfair, and ineffective as a process”. She goes on to state that the lack of power of third-party oversight organizations to implement disciplinary actions after their investigations conclude and leaving corrective measures to be imposed at the discretion of the RCMP or the municipal police services ultimately fits the, “police investigating police’ model (Stelkia, 2020a). Lengthy processing time of complaints, police resistance towards oversight procedure, and the lack of actionable powers of oversight organizations reduce the effectiveness of the oversight organizations' ability to hold problem officers accountable for their actions.

### **Body-Worn Cameras**

The implementation of BWC’s Canada-wide would increase the level of transparency of law enforcement and increase the likelihood that problem officers will be held accountable for their actions. Several incidents involving police’s use of lethal force against racialized community members have triggered Canada-wide outraged protests and the public has demanded that law enforcement be held accountable for their actions. Among those demands is the systematic introduction of BWCs for all front-line officers. A 2016 CBC News poll found that 75 per cent of Toronto residents believed that all officers should wear BWCs and 81 per cent of respondents strongly or somewhat agree with the statement that, “the prevalence of cameras will lead to more police officers being held accountable for their actions" (Glasbeek et al., 2020). Of those responses, 53 per cent agreed with the statement that “racism is a serious problem for Toronto Police Services” (Glasbeek et al., 2020).

Bystander videos are a new phenomenon that allows any person to film and broadcast police interactions with the public and have contributed to the reason Canadians want all

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front-line officers to wear a BWC while carrying out their duties (Glasbeek et al., 2020). Greg Brown, a 28-year veteran of the Ottawa police force surveyed 231 officers and found that over half of the police officers who participated said they have modified their use of force practices because of the prevalence of bystander videos (Spratt, 2016). Modifications to their use of force included either using less force, using force less often or both. Bystander videos have also shed light on the overrepresentation of BIPOC in police practises such as carding and the often-hostile nature of those interactions between police-minority groups. A CBC News investigation into Edmonton Police Service practices such as carding found that BIPOC were five times more likely to be stopped and carded than Caucasian people, with Indigenous women being ten times more likely to be carded than Caucasian women (Tobias & Joseph, 2020).

Glasbeek et al. (2020) examined the high-profile case of the death of Sammy Yatim, an 18-year-old Middle Eastern man who was killed by officer James Forcillo on a downtown Toronto streetcar. Within 50 seconds of police arrival, officer Forcillo fired nine shots at Yatim, the first three fatally wounding him. Forcillo then fired a second round of six shots while Yatim was lying on the ground before a second officer tasered Yatim. Three years later, officer Forcillo was found guilty of attempted manslaughter for the second round of bullets and sentenced to six years in prison. The existence of two bystander videos documenting the fatal encounter played a key role in officer Forcillo's sentencing and the public's concerns about police accountability for their use of force. The public outrage that ensued led to a review of police use of force by the Toronto Police Service (TPS) to be commissioned by Supreme Court Justice Frank Iacobucci. One of the key recommendations to emerge from the Iacobucci Report was that frontline officers be equipped with BWCs.

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Despite the popular demand for BWCs, Canadian law enforcement has proceeded very slowly with the technology and only a handful of municipal police services have committed themselves to adopt BWCs (Glasbeek et al., 2020). The Royal Canadian Mounted Police piloted BWCs and rejected the use of the technology for its members. Similar decisions have been made by Vancouver and Victoria police services in British Columbia, Halifax Police Service in Nova Scotia, and Montreal Police Service in Quebec. Logistical reasons for the delay in implementing BWCs in Canada stems from technological and cost difficulties. Toronto Police Service initiated a pilot project to test these devices from May 2015 until June 2016 and equipped 100 officers from various divisions and units with BWCs (Bud, 2020). The project had a \$500,000 budget that was intended to cover the annual cost for the 100 cameras.

Canada's slow adoption of BWCs by municipal police forces and the rejection of BWCs by RCMP fails to meet the level of transparency that Canadians have asked of Canadian law enforcement. It also robs them of the possible positive impact that adopting BWCs could have on improving the behaviour of police officers and holding problem officers accountable.

### **Recommendations**

The main revisions suggested are to provide third-party oversight organizations with the power to impose disciplinary actions and to equip all front-line law enforcement personnel with BWCs. The decision to instill third-party oversight organizations for Canada's law enforcement did not arise for no particular reason. Deteriorating public trust and demands to increase police's level of transparency, impartiality, and accountability due to Canadians increased awareness of police-encounters where systemic racism was at play and the growing belief that internal accountability efforts are inadequate is what drove that decision across different police forces and the RCMP.

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A third-party oversight institution will be much more effective if it has the ability and authority to subpoena witnesses, required documents, and other materials relevant to an investigation (Hope, 2020). Additionally, third-party oversight organizations must also have the power to discipline officers based on the findings of their investigation. Instilling third-party oversight is a recognition that the model of, “police investigating police” is the perfect breeding ground for bias and inadequate accountability to flourish (Stelkia, 2020a). Therefore, limiting oversight organizations’ ability to formally discipline officers based on the findings of their investigation and reserving the decision of which corrective measures are to be imposed at the discretion of police forces, leaves ample opportunity for partisanship to influence how officers are disciplined.

The use of BWCs for all Canadian police officers is a development that Canadians have expressed to police forces that they want to see implemented and police officers have admitted to using less force due to the possibility that they are being filmed. Countless reviews have been conducted to scrutinize police forces and produced a final report that recommends that police officers be equipped with BWC’s to increase their level of transparency and public trust. Glasbeek et al. (2020) mentioned a report released by the Office of the Independent Police Review Director in late 2018 on the Thunder Bay Police Service (TBPS) where they determined that there was evidence of systemic racism in the TBPS and recommending the adoption of BWCs immediately.

The cost associated to implement and maintain this technology is a definite factor to be considered; however, the implementation of this technology could also save law enforcement organizations money that could be repurposed to maintain BWCs. Bud (2016) stated that in addition to increasing police transparency and accountability, these devices also hold the

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potential to reduce police officer's exposure to litigation and unwarranted citizen complaints. There is a financial investment required to prepare, attend and resolve complaints through internal and third-party oversight processes: "One time we were having a meeting with all the heads of all the professional standards sections. Another police agency said they had a verbal reprimand [discipline case] that cost them \$65,000," said a professional standards officer (Stelkia, 2020a). The implementation of BWCs would increase the level of public trust and the amount of transparency of what truly occurs between civilians and law enforcement when they interact.

### **Conclusion**

There is no shortage of evidence that systemic racism is embedded within law enforcement in Canada. Scholars have written ad nauseam about it, people within law enforcement have spoken out about it and countless reviews of police forces have drawn to the conclusion that systemic racism continues to impact and shape how BIPOC are policed in comparison to their Caucasian counterparts. Police officers are given special powers to enable them to provide citizens with a safe and secure environment (Hope, 2020). These special powers come with expectations of professionalism, ethical conduct, and integrity from all members of law enforcement. They also come with the expectation that the system they work within operates in such a way wherein police officers are held accountable when they have abused those powers.

Apathy and the failure to address the misconduct within police forces make way for the perpetuation of systemic racism and inevitably erodes the public's trust toward law enforcement. The main revisions suggested are to provide third-party oversight with the power to impose disciplinary actions (Stelkia, 2020a; Westmarland & Conway, 2020), and to equip all front-line law enforcement personnel with BWCs (Glasbeek et al., 2020).

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