



# Black Legal Action Centre

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## COVID -19: Ontario's Second Provincial Emergency Order Statement by: The Black Legal Action Centre

January 15, 2021

On January 12, 2021, the Ontario government declared a second state of emergency under section 7.0.1 (1) of the *Emergency Management and Civil Protection Act* (EMPCA).<sup>1</sup> This emergency declaration comes as a consequence of the alarmingly high rates of COVID-19 throughout the province, as well as the modeling data that shows the projected increasing rates of infection in Ontario without intervention. In conjunction with the state of emergency, the provincial government has also issued a stay-at-home order, effective at 12:01 am, January, 14, 2021, for 28 days.<sup>2</sup> This follows Quebec's decision to implement a provincial curfew, which is currently in effect until February 8, 2021.<sup>3</sup>

As the spread of COVID-19 continues, the Black Legal Action Centre (BLAC) is concerned that these extraordinary measures will disproportionately impact Black, Indigenous and other racialized communities. Many members of our communities are essential workers; this includes grocery store clerks, individuals who work in delivery services, and personal support workers, to name a few. Because these individuals are on the front lines of this pandemic, they are not only at a higher risk to contract the virus through exposure, they are also at a higher risk to interact with law enforcement who have been given the legal authority to enforce these emergency measures.

In a 2020 Interim Report entitled, "A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service"<sup>4</sup>, the

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<sup>1</sup> *Emergency Management and Civil Protection Act*, RSO 1990, c E9, s 7.01 (1).

<sup>2</sup> Government of Ontario, *Ontario Declares Second Provincial Emergency to Address COVID-19 Crisis and Save Lives*, (12 January 2021), online: Government of Ontario <<https://news.ontario.ca/en/release/59922/ontario-declares-second-provincial-emergency-to-address-covid-19-crisis-and-save-lives>>.

<sup>3</sup> CTV News, *Quebec now officially under curfew for the next four weeks*, (9 January 2021), online: CTV News <<https://montreal.ctvnews.ca/quebec-now-officially-under-curfew-for-the-next-four-weeks-1.5260558>>.

<sup>4</sup> The Ontario Human Rights Commission, "A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service" (August 2020) at 2, online (pdf): Ontario Human Rights Commission <<http://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20Second%20interim%20report%20on%20t>

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Ontario Human Rights Commission (OHRC) confirmed once again what Black, Indigenous and other racialized communities have been saying for far too long about the unequal ways in which we experience encounters with the police.

The OHRC report found, among many issues, that Black people are grossly over-represented in discretionary, lower-level charges and are more likely to face low quality charges with a low probability of conviction.<sup>5</sup> We also understand from the OHRC report that Black people are disproportionately over-represented in use of force cases by police<sup>6</sup> and were more likely to be involved in use of force cases that involved proactive (for example, when an officer decides to stop and question someone) rather than reactive policing (for example, when the police respond to a call for assistance). The report also found that the significant over-representation of Black people in lower-level use of force incidents cannot be explained by factors such as patrol zones in low-crime and high-crime neighbourhoods, violent crime rates and/or average income. The over-representation remained constant and significant even after controlling for these factors, suggesting that race was a much stronger predictor of police use of force.<sup>7</sup>

In a global pandemic, these grim figures, as well as the lack of paid sick days, income support, and inadequate access to safe housing, make the daily realities of Black life extremely challenging.

The need for emergency measures during this difficult and unprecedented time is clear. However, we remain deeply concerned about the potential for these measures to result in the further criminalization of Black, Indigenous and racialized people. It is important to note that a mere four days into the province-wide curfew requiring Quebec residents to be in their homes by 8:00pm, “evening-shift” factory workers have already been subject to curfew related fines, despite being in possession of authorization letters.<sup>8</sup>

BLAC calls on municipal, provincial, and federal governments to commit to ensuring that the emergency measures are not misused and/or applied in a discriminatory manner. We strongly urge all levels of government to ensure that any emergency measure taken during this

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<sup>5</sup> *Ibid at 2.*

<sup>6</sup> The OHRC report shows that “a Black person in Toronto was nearly 20 times more likely than a White person to be involved in a fatal shooting by the Toronto Police Service (TPS “a Black person in Toronto was nearly 20 times more likely than a White person to be involved in a fatal shooting by the Toronto Police Service (TPS)”) See The Ontario Human Rights Commission, “A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service,” (November 2018), online: <<http://www.ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black>>.

<sup>7</sup> *Supra note 4, at 3.*

<sup>8</sup> CTV News, *Montreal evening-shift workers slapped with curfew fines despite authorization letters* (12 January 2021), online: CTV News <<https://montreal.ctvnews.ca/montreal-evening-shift-workers-slapped-with-curfew-fines-despite-authorization-letters-1.5263664>>.



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exceptional time is in accordance with Canada's international human rights obligations and provincial human rights laws.

\*\* For more resources and information on COVID-19 emergency measures, please visit BLAC's website [here](#).